

No. 3184

---

---

United States  
Circuit Court of Appeals

For the Ninth Circuit. 4

---

AMERICAN MINERAL PRODUCTION COM-  
PANY, a Corporation,

Plaintiff in Error,

vs.

F. M. HELSLEY,

Defendant in Error.

---

Transcript of Record.

---

Upon Writ of Error to the United States District Court of the  
Eastern District of Washington, Northern Division.

---

FILED

AUG 14 1918

F. D. MURKIN,  
CLERK.



No. 3184

---

United States

Circuit Court of Appeals

For the Ninth Circuit.

---

AMERICAN MINERAL PRODUCTION COM-  
PANY, a Corporation,

Plaintiff in Error,

vs.

F. M. HELSLEY,

Defendant in Error.

---

Transcript of Record.

---

Upon Writ of Error to the United States District Court of the  
Eastern District of Washington, Northern Division.

---





# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amended Complaint .....	1
Answer to Amended Complaint.....	4
Assignment of Errors.....	115
Bill of Exceptions .....	13
Bond on Writ of Error.....	120
Certificate of Clerk U. S. District Court to Transcript of Record .....	130
Citation on Writ of Error.....	124
Interrogatories and Answers Propounded to and Made by C. R. Cole.....	77
Interrogatories and Answers Propounded to and Made by T. P. Smith.....	87
Judgment .....	11
Motion for New Trial.....	8
Names and Addresses of Attorneys of Record..	1
Order Allowing Bond .....	118
Order Allowing Writ of Error.....	117
Order Extending Time to August 15, 1918, to File Transcript .....	128
Order Overruling Motion for New Trial.....	10
Order Settling Bill of Exceptions.....	112
Petition for Order Allowing Writ of Error....	114
Praecipe for Transcript of Record.....	129

2      *American Mineral Production Company*

resident of the County of Stevens, State of Washington. That the defendant, C. R. Cole, now is and at all times herein mentioned was a citizen of the United States and a resident of the City of Chicago, State of Illinois. That the defendant, American Mineral Production Co., now is and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of South Dakota and carrying on a mining business in the County of Stevens, said State.

2d. That on or about the 14th day of July, 1917, said defendants for and in consideration of the sum of \$5,500, orally purchased from plaintiff and plaintiff sold to defendants, all of his right, title and interest in and to six motor trucks situated at the town of Valley, Stevens County, Washington, and particularly described as follows, to wit:

One 3½ Ton Signal Motor Truck, Model "M," No. 555, Motor No. 15382.

One 3½ Ton Signal Motor Truck, Model "M," No. 856, Motor No. 15444.

One 3½ Ton Signal Motor Truck, Model "M," No. 880, Motor No. 15495.

One 3½ Ton Signal Motor Truck, Model "M," No. 876, Motor No. 15480.

One 3½ Ton Signal Motor Truck, Model "M," No. No. 889, Motor No. 15488.

One 2 Ton Signal Motor Truck, Model "J," No. 196, Motor No. 14744.

3d. That said defendants, immediately after said sale, [3] took possession of said trucks and commenced to operate the same in the hauling of magne-

site from the quarries of the defendant corporation to the town of Valley in said County and State.

4th. That on or about the 18th day of July, 1917, plaintiff demanded payment of said defendants for said trucks and said defendants have failed and refused and still fail and refuse to pay the same.

WHEREFORE, plaintiff prays for judgment against the said defendants in the sum of five thousand five hundred dollars (\$5,500), together with interest thereon at the rate of six per cent per annum from the 18th day of July, 1917, until paid, and for the costs and disbursements of this action and for such other and further relief as to the Court may seem just.

(Signed) L. C. JESSEPH,  
ZENT & POWELL,  
Attorneys for Plaintiff.

State of Washington,  
County of Stevens,—ss.

F. M. Helsley, being first duly sworn, on oath deposes and says: I am the plaintiff in the above-entitled action, I have read the foregoing complaint and know the contents thereof and the same are true.

(Signed) F. M. HELSLEY.

Subscribed and sworn to before me this 10th day of December, 1917.

(Signed) R. A. THAYER,  
Notary Public in and for the State of Washington,  
Residing at Colville, Washington.

[Endorsements]: Amended Complaint. Due service of the within Amended Complaint accepted this 19th day of December, 1917. (Signed) Post, Russell, Carey & Higgins, Attorneys for Defendants. Filed in the U. S. District Court for the Eastern District of Washington. December 19, 1917. W. H. Hare, Clerk. By S. M. Russell, Deputy. [4]

---

[Title of Court and Cause.]

**Answer to Amended Complaint.**

Come now the defendants and for answer to plaintiff's amended complaint, admit, deny and allege as follows:

I.

Admit paragraph I of the amended complaint.

II.

Deny that on or about the 14th day of July, 1917, or at any time, said defendants or either of them, in consideration of the sum of fifty-five hundred dollars (\$5,500) or any sum, orally or otherwise agreed to purchase the personal property mentioned in paragraph II of the amended complaint, or any part thereof.

III.

Deny that immediately after said alleged sale, or at all, the defendants or either of them took possession of said trucks or any of them and commenced to operate the same as alleged in paragraph III or at all.

IV.

Deny each and every allegation contained in



paragraph IV of the amended complaint.

FIRST AFFIRMATIVE DEFENSE.

Further answering the plaintiff's amended complaint and as an affirmative defense thereto, the defendants allege that any negotiations between the plaintiff and the defendants or either of them for the sale of said trucks was entirely oral; that the [5] defendants did not accept or receive any part of the said goods or give anything in earnest to bind the alleged bargain or in part payment, or sign any note or memorandum in writing of the alleged bargain, and that the alleged contract of sale mentioned in plaintiff's amended complaint is void under section 5290 of Remington & Ballinger's Annotated Codes and Statutes of Washington.

WHEREFORE, defendants pray that this action be dismissed and that they recover their costs herein.

(Signed) POST, RUSSELL, CAREY &  
HIGGINS,

Attorneys for Defendants.

State of Washington,  
County of Spokane,—ss.

Stephen V. Carey, being first duly sworn, on oath deposes and says that he is one of the attorneys for the defendant in the above-entitled action; that he has read the foregoing answer, knows the contents thereof, and the facts therein stated are true.

(Signed) STEPHEN V. CAREY.

Subscribed and sworn to before me this 22d day of January, 1918.

(Signed) H. V. DAVIS,  
Notary Public in and for the State of Washington,  
Residing at Spokane.

[Endorsements]: Answer to Amended Complaint. Personal Service of the within Answer is hereby admitted at Spokane, Washington, the 22d day of January, 1918. (Signed) Zent & Powell, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington. January 22, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [6]

---

[Title of Court and Cause.]

**Reply.**

Comes now the above-named plaintiff and for reply to the affirmative matter contained in the answer of the above-named defendants alleges as follows:

I.

Denies each and every allegation contained in said affirmative defense.

WHEREFORE said plaintiff prays for judgment as in the complaint demanded.

(Signed) L. C. JESSEPH,  
ZENT & POWELL,  
Attorneys for Plaintiff.

State of Washington,  
County of Stevens,—ss.

F. M. Helsley, being first duly sworn, on oath deposes and says: I am the plaintiff in this action, I

have read the foregoing reply, know the contents thereof, and the same are true.

(Signed) F. M. HELSLEY.

Subscribed and sworn to before me this 28th day of January, 1918.

(Signed) L. C. JESSEPH,  
Notary Public in and for the State of Washington,  
Residing at Colville, Washington. [7]

[Endorsements]: Reply. Due service of the within Reply accepted this 29th day of January, 1918. (Signed) Post, Russell, Carey & Higgins, Attorneys for Defendants. Filed in the U. S. District Court for the Eastern District of Washington. January 30, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [8]

---

[Title of Court and Cause.]

**Verdict.**

We, the jury in the above-entitled cause, find for the plaintiff, and against the defendant American Mineral Production Company, and assess the amount of his recovery at five thousand seven hundred and fifty-three dollars (\$5,753).

(Signed) S. A. SPEAR,  
Foreman.

[Endorsements]: Verdict. Filed April 24, 1918.  
W. H. Hare, Clerk. [9]

[Title of Court and Cause.]

**Motion for New Trial.**

Comes now the defendant, American Mineral Production Company, and moves the Court for an order to set aside the verdict rendered by the jury in said cause and to set aside the judgment entered thereon, which verdict was rendered on the 24th day of April, 1918, and judgment thereon was entered on the 25th day of April, 1918, and to grant a new trial in said cause upon the following grounds:

1. Error in law occurring at the trial and excepted to by the defendant.
2. Insufficiency of the evidence to justify the verdict.
3. That the judgment is against the law.

As to the errors in law occurring at the trial to which exception was taken at the time the defendant, American Mineral Production Company, specified the particular errors which it relies upon, to wit:

(a) Error of the Court in denying the said defendant's challenge to the sufficiency of the evidence and the motion for a judgment at the close of plaintiff's case.

(b) Error of the Court in denying the defendant's challenge to the sufficiency of the evidence and a motion for judgment for the defendant, which motion was made at the close of the evidence of the entire case.

(c) Error of the Court in entering judgment in the cause. [10]

As to the points of the insufficiency of the evi-



dence to justify any verdict or judgment in favor of the plaintiff, the defendant specifies the particulars thereof as follows:

The defendant contends that most favorable evidence to the plaintiff is to the effect that the evidence shows that the plaintiff and C. R. Cole, who was president of the American Mineral Production Company, had some negotiations relating to the sale and purchase of the interest of the plaintiff in and to some auto trucks and his entire interest in and to a certain truck line known as the Cashmere truck line and owned by C. R. Cole and the plaintiff in equal interests. That the evidence does not show that C. R. Cole was acting as an officer of the American Mineral Production Company in these negotiations. That it was contemplated by C. R. Cole and the plaintiff that the negotiations when reduced to definite terms were to be set forth in a written contract signed by the parties to the said negotiations. The evidence does not show that any contract in writing or otherwise was ever made between the defendant, American Mineral Production Company, and the plaintiff, nor between C. R. Cole and the plaintiff, as was contemplated by said negotiations.

This motion is based upon the pleadings and papers on file, the minutes of the court, including not only the clerk's minutes but any notes or memorandum which may have been kept by the Judge of this court in the trial thereof, and also the reporter's transcript of his shorthand notes of said trial, and upon the exhibits introduced at the trial of said cause.

Dated at Spokane, Washington, this 30th day of April, A. D. 1918.

(Signed) POST, RUSSELL, CAREY &  
HIGGINS,

Attorneys for the Defendant, American Mineral  
Production Company. [11]

I certify that the filing of the within motion is allowed this 30th day of April, 1918.

(Signed) FRANK H. RUDKIN,  
Judge.

[Endorsements]: Motion for New Trial. Personal service of the within Motion for New Trial after filing is hereby admitted at Spokane, Washington, the thirtieth day of April, 1918. (Signed) Zent & Powell, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington. April 30, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [12]

---

[Title of Court and Cause.]

**Order Overruling Motion for New Trial.**

This cause coming on to be heard this 20th day of May, 1918, upon the motion of the above-named defendant, American Mineral Production Company, a corporation, for a new trial, plaintiff appearing by his attorney, L. C. Jesseph, and the defendant American Mineral Production Company appearing by its attorneys, Post, Russell, Carey & Higgins, and the Court having heard the arguments of counsel and being fully advised in the premises,—

IT IS HEREBY ORDERED that said motion be and the same is hereby overruled, to which ruling the defendant American Mineral Production Company excepts and the exception is allowed.

Done this 20th day of May, 1918.

(Signed) FRANK H. RUDKIN,  
Judge.

[Endorsements]: Order Overruling Motion for New Trial. Personal Service of the Within Order is Hereby Admitted at Spokane, Washington, the 20th Day of May, 1918. (Signed) Post, Russell & Higgins, Attorneys for Defendant. Filed in the U. S. District Court for the Eastern District of Washington. May 20, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [13]

---

[Title of Court and Cause.]

**Judgment.**

This cause coming on to be heard this 23d day of April, 1918, before the Court and a jury upon the issues of law and fact raised by the pleadings, and plaintiff appearing in person and by his attorneys, L. C. Jesseph and Zent & Powell, and the defendants appearing by their attorneys, Post, Russell, Carey & Higgins, and all the evidence having been adduced and the jury having received said cause and returned its verdict into court finding for plaintiff against the defendant, American Mineral Production Company, a corporation, in the sum of \$5,753 and the defendant C. R. Cole having heretofore been ordered dis-



for a judgment dismissing said cause as to the defendant C. R. Cole was granted, and the court was of the opinion at the close of the entire case that the evidence was sufficient to warrant the Court in submitting the case to the jury as to whether or not there was a sale of said trucks by the plaintiff to the defendant American Mineral Production Company and a breach of said contract of sale.    [16]

[Title of Court and Cause.]

Before Hon. FRANK H. RUDKIN, Judge Presiding, and a Jury.

APPEARANCES:

For the Plaintiff:

L. C. JESSEPH, Esq., Colville, Washington.

W. W. ZENT, Esq., Spokane, Washington.

For the Defendants:

Messrs. POST, RUSSELL, CAREY & HIGGINS.

STATEMENT OF FACTS.

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the above-entitled court on Tuesday, April 23, 1918, at 10:00 A. M., before the Hon. Frank H. Rudkin, Judge presiding, and a Jury, the plaintiff being represented by his counsel, L. C. Jesseph, Esq., of Colville, Washington, and W. W. Zent, Esq., of Spokane, Washington, and the defendants being represented by their counsel, Messrs. Post, Russell, Carey & Higgins;

Thereupon a jury was duly empaneled and sworn to try the cause, and thereafter the following proceedings were had:

**Testimony of F. M. Helsley, in His Own Behalf.**

F. M. HELSLEY, the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. JESSEPH.)

Q. Your name is F. M. Helsley?

A. Yes, sir. [17]

Q. You are the plaintiff in this action?

A. Yes, sir.

Q. You are a married man?      A. Yes, sir.

Q. And you are living in the city of Spokane at this time?      A. At this time; yes, sir.

Q. Are you acquainted with the American Mineral Production Company?      A. Yes, sir.

Q. And with Mr. Cole, the other defendant in this case?      A. Yes, sir.

Q. How long have you known of the American Mineral Production Company?

A. If I remember right a year ago, about the middle of March, the first I met them.

Q. How long have you been acquainted with Mr. Cole?

A. I think Mr. Cole came to Valley about the 25th—between the 25th and the last of June, if I remember right, of last year.

Q. What business are you engaged in at this time?

A. I am working for the Yuba Manufacturing Company.

Q. Did you have any business transaction with

(Testimony of F. M. Helsley.)

Q. On what day was that?

A. On the 13th day of July, Saturday, I believe.

Q. What was the result of these negotiations?

A. Why, they agreed to take over all of the indebtedness due or outstanding bills and give me \$5,500 and release me.

Q. Five thousand five hundred dollars for your interest? A. Yes, sir.

Q. When was the money to be paid?

A. On Wednesday, the following Wednesday; I think that would be the 18th.

Q. Who was present at the time the negotiations were concluded?

A. Mr. Cowan, Mr. T. P. Smith and C. R. Cole.

Q. And yourself? A. And myself.

Q. And where were the negotiations concluded?

[20]

A. At the Spokane & Eastern Trust Company's place of business.

Q. Right after this, what was done with the trucks?

A. The company proceeded to operate them.

Q. What did you do?

A. Well, I proceeded to leave Valley.

Q. Before you left Valley what did you do with reference to the trucks?

A. I turned them over to Mr. Brunt and Mr. Smith, who took charge of them.

Q. Who was Mr. Brunt?

A. Well, as far as I could learn, he was their managing director, or something like that.

(Testimony of F. M. Helsley.)

Q. Did he have anything to do with the business of the American Mineral Production Company at Valley?

A. Until Mr. Cole came, and after he came he seemed to have everything to do, all the say.

Q. How long did the company operate the trucks?

A. One week, up until Saturday night.

Q. What did you say when you turned the trucks over? A. I recommended a foreman for them.

Q. With reference to the trucks, I mean?

A. Well, Mr. Brunt told me that the company had bought them, and that I was released, and that they were going to operate them.

Q. Did you have some men there running the trucks? A. Yes, sir, I had a full crew of men?

Q. What did the company do with reference to those men?

A. They put them all to work and raised their wages.

Q. Working at what? A. At driving these trucks.

Q. What was done, if anything, about a foreman?

A. They took the foreman that I recommended.

Q. Who? [21] A. Mr. Bunyard.

Q. What did they wish him to do?

A. To see to the running of the motor trucks and the gasoline and oil.

Q. Did you have some gasoline on hand?

A. Nearly a carload.

Mr. CAREY.—Do you pretend to know this of your own knowledge? A. I certainly do.



(Testimony of F. M. Helsley.)

Mr. CAREY.—Are you testifying now concerning things that happened after you made this alleged deal in Spokane? A. Am I what?

Mr. CAREY.—I think you said that when you came down here to Spokane you did not go back to Valley at all? A. Yes, sir; I went back.

Mr. CAREY.—Oh, very well.

Mr. JESSEPH.—Q. Were you at Valley at the time the company took these trucks? A. I was.

Q. What did you do about your oil and your gas?

A. That was considered in the sale to the company.

Q. What did you do with it?

A. I turned the keys over to their foreman, Mr. Bunyard and Mr. Brunt.

Q. Did you have it stored there? A. Yes.

Q. And you say when you made the deal you turned over the keys to this house to them?

A. To the oil and gas house, yes.

Q. How much oil and gas was there?

A. Well, there was half a carload of gasoline and two barrels of cylinder oil.

Q. Do you know who paid the men for the work they did in [22] operating the trucks, and who paid the foreman, Mr. Bunyard's wages?

A. The American Mineral Production Company.

Q. At the time you were negotiating here and this deal was closed, as you have testified, at the Spokane & Eastern Trust Company, did Mr. Cole say anything about taking over the trucks?

A. He told Mr. Smith to, yes.



(Testimony of F. M. Helsley.)

Mr. CAREY.—Who told Mr. Smith?

Mr. JESSEPH.—Cole told Smith to take over the trucks.

Mr. CAREY.—When was this, Mr. Helsley?

A. On Saturday.

Mr. JESSEPH.—Q. What did the company do, so far as your knowledge is concerned, about the payment of any of the bills?

A. Well, the grocery bill for the boarding-house that I was running was paid by the company. Mr. Kulzer took a bill in of \$303, I believe. They took that in and agreed to pay it. The Firestone Tire & Rubber Company, I owed them something over \$600. Mr. Smith went over there and had it segregated so that he would know which one to charge each bill to. There was three bills, the total amount, and he got that straightened out, so that he would know who to charge for these tires.

Q. After the 14th day of July did you have anything to do with the trucks?

A. Nothing whatever.

Q. Did you ever have them in your possession or did you ever operate them?     A. I never did.

Q. Did you owe your truck driver some money when the trucks were taken over by the company?

A. I did.

Q. What was done with those items?

A. That was paid by the company.

Q. By the American Mineral Production Company? [23]

(Testimony of F. M. Helsley.)

A. By the American Mineral Production Company.

Q. Have you ever been paid the \$5,500?

A. Not a dollar of it.

Q. Have you demanded payment of it?

A. Through this suit, yes, is all.

Cross-examination.

(By Mr. CAREY.)

Q. When did you say you first had business relations with the Mineral Company, Mr. Helsley?

A. If I remember right, it was in March a year ago.

Q. What was the nature of your relation at that time?

A. I was trying to secure the contract for the hauling of the magnesite.

Q. Did you secure the contract?

A. About the last of March, yes.

Q. In what name did you secure that contract?

A. Cashmere Truck Line.

Q. Cashmere Truck Line was a partnership, was it?      A. It was.

Q. Consisting of yourself and who else?

A. John Wilson.

Q. He was from Wenatchee?      A. Yes, sir.

Q. And you came from Wenatchee, did you?

A. Came from Cashmere.

Q. At the time you made this contract in the latter part of March for hauling, did you have any trucks?      A. Yes, sir.

(Testimony of F. M. Helsley.)

Q. How long did you have them prior to the contract?

A. Well, before—the four were bought within two years.

Q. How is that?

A. There was four of them bought within two years. [24]

Q. The trucks that you afterwards used on this hauling up here in Valley?

A. Yes, sir; part of them, three of them.

Q. Did you buy any other trucks especially to carry out this contract? A. Yes, sir.

Q. From whom did you buy those?

Mr. JESSEPH.—I object to that as improper cross-examination.

The COURT.—I don't know what it is leading up to. It may lead to something material.

A. The Waterhouse-Sands Motor Company.

Q. You bought those trucks on some sort of monthly payment plan, did you? A. Yes, sir.

Q. I now hand you a document and ask you if that is the hauling contract between yourself and the American Mineral Production Company.

Mr. JESSEPH.—I object to it as not proper cross-examination. It is not competent, relevant or material.

Mr. CAREY.—It is the contract under which this series of operations started, your Honor.

Mr. JESSEPH.—There is no issue between us as to that, I think.

The COURT.—It will be admitted.

(Testimony of F. M. Helsley.)

A. Yes, sir.

Q. That is the contract under which you and your partner, Mr. Wilson, of Wenatchee, under the name of the Cashmere Truck Line, started to haul magnesite for the American Mineral Production Company? A. Yes, sir.

Mr. CAREY.—I offer this contract in evidence.

Whereupon said contract was admitted in evidence and marked Defendants' Exhibit 1. [25]

Q. How long did you and your partner, Mr. Wilson, continue to operate under that contract?

A. Until the first of June.

Q. What happened about the first of June?

A. Mr. Cole, or the American Mineral Production Company, bought Mr. Wilson's interest.

Q. You have personal knowledge of those negotiations under which Mr. Wilson sold his interest, do you? A. Nothing more than the amount.

Q. How is that?

A. Nothing more than the amount he received.

Q. That is the only thing you know about it?

A. About all, yes.

Q. You are sure of that, now?

A. Why, I was present. I don't recall everything that was transacted, no.

Q. Weren't you present at the time and place when that contract was made? A. I was, yes.

Q. Where was it made?

A. In your office.

Q. And who else was there?

A. I think Mr. Smires.



(Testimony of F. M. Helsley.)

Q. And who else?

A. John Wilson, and a man by the name of Mandell.

Q. And you knew all about him, didn't you? The contract was negotiated right there in my office and executed in my office?

A. I knew the contents of the contract, yes.

Q. Did you have anything else to do with that contract yourself?

A. If I remember rightly I signed it.

Q. You signed that contract yourself?

A. I think so, yes. [26]

Q. I now hand you a document and ask you if that is the original contract under which your partner, Mr. Wilson, undertook to sell out his interest?

A. Yes, sir.

Q. Who purported to sign this contract on behalf of Mr. Cole? A. Mr. Smires.

Q. Who is Mr. Smires?

A. Why, at that time I understood he was superintendent.

Q. Mr. Cole was not personally present?

A. No, sir.

Q. And who was this man Mandell who signed the contract?

A. He was the Waterhouse-Sands representative.

Q. What interest did the Waterhouse-Sands Motor Company have in the transaction?

A. Well, we were buying it from them on contract.

Q. You were buying from them on contract?

A. We were, Mr. Wilson and I.

(Testimony of F. M. Helsley.)

Q. And your contract of purchase provided that you should not sell without their consent?

A. It did.

Q. And at the time this contract was made there was a large amount on the purchase price still due Waterhouse-Sands Motor Company, is that correct?

A. Yes, sir.

Q. And at the time you came down here to Spokane, came down to my office for the purpose of executing this contract, there wasn't any representative of the Waterhouse-Sands Motor Company present, was there, you telephoned over to Seattle and had Mr. Mandell come over?

A. I don't know. Some of us telephoned.

Q. Either you or your partner, Mr. Wilson, telephoned? A. Yes. [27]

Q. And in response to your request, Mr. Mandell did come over, did he not? A. Yes, sir.

Q. And he signed this contract consenting to the sale, is that correct? A. Yes, sir.

Mr. CAREY.—We now offer this contract in evidence as an exhibit.

Thereupon said contract was admitted in evidence and marked Defendants' Exhibit 2.

Q. This contract of purchase was dated June 1st, 1917; is it not, Mr. Helsley?

A. I don't remember the exact date, no. Something near that.

Q. That is correct, is it? A. Yes, sir.

Q. Now, before this contract was executed, both you and Wilson were up at Valley personally look-

(Testimony of F. M. Helsley.)

ing after the business of hauling?      A. Yes, sir.

Q. And you and he as copartners were in possession of the trucks, operating them?      A. Yes, sir.

Q. And up to that time you had never seen Mr. Cole, had you?

A. No, sir; I had never seen the gentleman.

Q. And did not see him for something like five or six weeks after that, did you?

A. It was not that long. Something like three weeks; between two and three weeks.

Q. Well, anyway, up to the date of this contract, you and your partner were in possession of the trucks, operating them up at Valley, hauling magnesite?      A. Yes, sir.

Q. Then after this contract was executed, your partner Wilson went back to Wenatchee, did he not?

[28]      A. I don't know where he went.

Q. Well, he went away from Valley, and went away from Spokane?      A. Yes, sir.

Q. And went somewhere. And you continued in possession of the trucks, did you not?

A. Yes, sir.

Q. And continued to operate them just as you had done before, hauling magnesite?

A. Well, not exactly, no. Mr. Smires, the superintendent, had quite a lot to say about the operation.

Q. You were in charge of them, operating them?

A. Yes, sir.

Q. Under the original contract?      A. Yes, sir.

Q. Some time later Mr. Cole came out from Chicago, did he not?      A. He did.



(Testimony of F. M. Helsley.)

Q. And when was that, if you recall?

A. Why, something near the 25th—between the 25th and the 1st of July, I believe—the 25th of June and the 1st of July, I believe; I cannot recall just the date.

Q. And he went up to Valley, did he?

A. He did.

Q. Did you see him there?      A. I did.

Q. Did you talk to him about those trucks?

A. Well, about the contract, yes.

Q. About the contract of hauling?      A. Yes.

Q. That is the first contract we introduced in evidence?      A. Yes, sir.

Q. You had no conversation with him at Valley concerning the purchase of your interest? [29]

A. Yes.

Q. When was that?

A. Well, that was after the 10th of July, I believe; I am not certain.

Q. It was a very casual talk, wasn't it?

A. Well, no. It led up to the final agreement here in Spokane between him and I.

Q. Anyway, what you claim was the final agreement was made in Spokane?      A. Yes, sir.

Q. And you say it was at the Davenport Hotel and the Spokane & Eastern Trust Company?

A. At the Spokane & Eastern Trust Company, yes.

Q. Did you have any conversation at the Davenport Hotel about it?      A. Yes.

Q. Was that before or after the conversation at



(Testimony of F. M. Helsley.)

the Spokane & Eastern Trust Company?

A. Before.

Q. On the same day?      A. Yes, sir.

Q. Then you went down to the Spokane & Eastern Trust Company and had a conversation down there?      A. Yes, sir.

Q. And you say that you and Mr. Smith, the book-keeper, Mr. Cole and Mr. Cowen were present?

A. Yes, sir.

Q. Mr. Cowan was an attorney?

A. For me, yes.

Q. And acting for you?      A. Yes, sir.

Q. This was on what day?      [30]

A. I think Saturday, the 13th of July.

Q. Did you come down from Valley especially to see Mr. Cole on this business at that time?

A. I think so, yes.

Q. What had you been doing in Valley just immediately before he came down?

A. I had not been doing anything from the first of July, hauling very little; nothing like the contract called for.

Q. There wasn't very much hauling going on?

A. No, very little.

Q. You had been hauling some, however?

A. Very little, yes.

Q. You had been hauling some?      A. Yes.

Q. With these trucks?      A. Yes.

Q. Then on the 13th of July you came to Spokane and had this conversation with Mr. Cole?

A. Yes, sir.

(Testimony of F. M. Helsley.)

Q. What day of the week was that, if you recall?

A. On Saturday, I recall; the 13th I believe.

Q. And you say that he agreed to pay you \$5,500 for your interest?

A. Yes, sir.

Q. Was there any conversation between you as to the amount of the purchase price still unpaid to the Waterhouse-Sands Motor Company?

Mr. JESSEPH.—I object to that as not proper cross-examination.

Mr. CAREY.—It is a part of the consideration.

The COURT.—Whatever was said during these negotiations is proper cross-examination.

A. What is the question?

Q. I say, was there any conversation between you and Mr. Cole [31] at that time, at the Spokane & Eastern Trust Company, concerning the amount of the unpaid purchase price due to the Waterhouse-Sands Motor Company?

A. Yes, he asked me.

Q. Did you tell him? A. I did not.

Q. Why didn't you? A. I didn't know.

Q. You didn't know what the amount was?

A. I did not.

Q. You say, however, that his agreement was, and the part consideration of it was that he was to assume this indebtedness due on the trucks?

A. Yes, sir.

Q. And you didn't know what it was?

A. I did not.

Q. And therefore did not tell him?

A. I did not.

(Testimony of F. M. Helsley.)

Q. Was there any understanding between you at any time that you were to find out what that unpaid balance was?     A. There was not.

Q. He just agreed to assume this unpaid indebtedness, whether it was large or small?

A. He did.

Q. Without knowing what it was, is that correct?

A. He knew somewheres near, undoubtedly.

Q. Who told him what it was somewhere near?

A. I did not.

Q. You never made any statement to him one way or the other as to what the unpaid balance was?

A. I did not, no more than to tell him that I didn't know what it was. I told him that. [32]

Q. Had you incurred any bills to third parties in connection with the operation of the trucks that were then unpaid, at the time you had this conversation with Mr. Cole, on Saturday, July 13th?

A. Yes, sir.

Q. Did you tell him the amount of those unpaid bills?     A. As near as I could.

Q. What did you tell him was the amount?

A. What I told him the total amount?

Q. Yes.

A. I did not give him any total. I told him as near as I could.

Q. Did you tell him the amounts due to the different creditors?

A. As near as I could, yes.

Q. What was the total amount, so far as you recall now?

(Testimony of F. M. Helsley.)

A. Well, I could tell you somewheres near each and every one.

Q. What were the bills, outstanding bills, you told Mr. Cole were due at that time?

A. I probably don't remember them all. I remember the large ones, the Firestone Rubber Company, something like \$600.

Q. You told him that was due at that time, did you? A. I did.

Q. What were other ones?

A. John Kulzer lumber bill, if I remember right, that was two hundred and some dollars. \$203, I believe.

Q. Any others?

A. I think there was a blacksmith bill that I told him of one hundred and some dollars.

Q. Do you remember any others?

A. Well, I called to his mind the grocery bill and the labor bill.

Q. Did you make any statement to him whatever as to the total amount of the outstanding bills?

[33] A. No.

Q. Did you undertake to give him a list of all the creditors?

A. That is nearly all of them you have there.

Q. How do you know what I have here?

A. Well, that I have given you.

Q. The ones you have given me? A. Yes.

Q. The Firestone Tire & Rubber Company, and the Kulzer Lumber Company, and the grocery bill?

A. The blacksmith bill.



(Testimony of F. M. Helsley.)

Q. You say that was all of them?

The COURT.—And the labor bill.

Q. And the labor bill?      A. Yes.

Q. And you say you did not undertake to state to Mr. Cole definitely the amount of these unpaid bills?

A. I did not.

Q. But he agreed to assume them whatever they were?      A. Yes, sir.

Q. Did I understand you to say that the contract was definitely and finally closed in the Spokane & Eastern Trust Company on Saturday, July 13th?

A. I think it was Saturday, July 13th, yes.

Q. Well, whatever day this was?      A. Yes.

Q. You never had any negotiations with anybody else at any time subsequently concerning the execution of this contract?      A. No.

Q. Were you ever in my office in connection with this sale?      A. Yes, sir.

Q. When was that?

A. The day the money was to be paid. I think it was Wednesday, [34] the 18th.

Q. That was after the meeting with Mr. Cole in the Spokane & Eastern Trust Company, on Saturday, the 13th, of course?      A. Yes, sir.

Q. Now, Mr. Cole went back to Chicago on the 13th, didn't he?      A. As far as I know, yes.

Q. Anyway, you did not see him around here after that?      A. No.

Q. Then it was about the middle of the following week that you came into my office?

A. I think on Wednesday.

(Testimony of F. M. Helsley.)

Q. Who else was there at that time?

A. Why, Mr. T. P. Smith came in with you?

Q. Mr. Smith was a bookkeeper?

A. An accountant, yes.

Q. Was there anybody else there at that time?

A. I think Mr. Kover.

Q. Who is Mr. Kover?

A. A Waterhouse-Sands representative.

Q. How did it happen that he was there?

A. By request from the company, I think, to be there; the American Mineral Production Company.

Q. But not at your request?

A. No, sir.

Q. Now, isn't it a fact, Mr. Helsley, that you and Mr. Smith came in for the purpose of having a contract written up and that I advised you that, because of the terms of the Waterhouse-Sands contract of sale to you, it was necessary, or at least advisable, to have their representative there also. You remember that, don't you?

A. Not at this time, no. [35]

Q. You say such a thing as that did not occur?

A. It did with the transaction between Mr. Cole and Mr. Wilson, yes; I recall that.

Q. I am saying now about the other transaction?

A. I don't recall it at all.

Q. Mr. Kover, however, was there, or did come there shortly after?      A. Yes.

Q. And at that time you ascertained from Mr. Kover, did you not, the amount that was still unpaid on the purchase price of the trucks?

(Testimony of F. M. Helsley.)

A. I think Mr. Smith did.

Q. Well, didn't you?      A. I did not.

Q. Wasn't it disclosed right there in the meeting?

A. I don't remember.

Q. You don't remember?

A. No, I do not.    Not the amount.

Q. We were all sitting there together, weren't we, in my office?      A. Part of the time, yes.

Q. Weren't we all there together at the time when we were talking about the terms of the sale that would go into the written contract?

A. I don't recall it.

Q. Would you be willing to swear that that is not true, that the four of us were not there talking about the terms of this contract?

A. Mr. Kover was over for that purpose.

Q. How is that?

A. Mr. Kover was over for that purpose.

Q. But the question is, if it is not true that you and I and Mr. Smith and Mr. Kover were in my office on this occasion talking [36] over the terms of this proposed written contract?      A. Yes, sir.

Q. And at that time Mr. Kover said to all of us that that amount he claimed to be due on his contract, that is the contract of sale from the Waterhouse-Sands Motor Company to you, was \$10,611 and interest?      A. That was it.

Q. That is correct, isn't it?      A. Yes, sir.

Q. And was the written contract prepared for signature at that time?      A. In your office?

Q. Yes.

(Testimony of F. M. Helsley.)

A. Yes, sir; if I remember right; I think so.

Q. And this was along about Wednesday, the 18th of July, or possibly the next day?

A. I don't remember this contract, for I never read it.

Q. I will ask you now to read it and see if it does not substantially state the substance of our conversation there on that occasion?

A. (Witness reads paper.)

Mr. JESSEPH.—If your Honor please, I object to the question here, the identification of the writing in this way. I think it is not competent or material, and it is not cross-examination. It is a writing that was never signed and never was executed.

Mr. CAREY.—That is exactly what I am trying to prove, your Honor.

The COURT.—The question asks as to whether or not these were the negotiations that the parties had there.

Mr. JESSEPH.—That is true.

The COURT.—Don't you think these negotiations are competent?

(Argument by Mr. Jesseph.) [37]

The COURT.—He may answer the question if he knows whether these were the negotiations that the parties had or not.

A. I know nothing of that paper whatever any more than I did know there was one being made up for the transaction.

Q. And if you knew on Wednesday following this Saturday upon which you had this conversation with



(Testimony of F. M. Helsley.)

Mr. Cole, in the Spokane & Eastern Trust Company, that a written contract was being prepared in my office?

A. I didn't know it was being prepared, Mr. Carey.

Q. Why, Mr. Helsley, you were there, were you not, together with Mr. Smith and Mr. Kover?

A. I was there in your office, yes.

Q. And I was getting the information from all three of you to prepare a written contract, was I not? A. You were.

Q. And in order to incorporate the terms of the deal in a written contract I ascertained from Mr. Kover that there was \$10,611 still due on the contract, did I not?

A. Something like that, yes.

Q. And then the question came up as to the amount of other unpaid bills, did it not? A. It did.

Q. And was there some conversation about that?

A. As to the amount, yes.

Q. And as to who it was owing to? A. Yes.

Q. And did I ask you what unpaid bills you owed?

A. You did.

Q. And did you tell me there were unpaid bills owing as were recited in this document on page 4?

A. Yes, sir.

Q. And there are additional bills in there to what you say you [38] told Mr. Cole about on the Saturday before?

A. I told you I did not remember all of the bills that I told Mr. Cole. I had no list of them.

(Testimony of F. M. Helsley.)

Q. Anyway, there were some bills put down here in Spokane the amount of which you didn't definitely know, were there not?

A. Not here in town, I knew all of them, because we went and got the biggest ones.

Q. That is exactly what I was going to ask you. Do you remember, Mr. Helsley, that the question came up about the account of the Firestone Tire & Rubber Company?      A. I do.

Q. And I insisted that I ought to know the amount of it?      A. Yes, sir.

Q. And that you and Mr. Smith went out of my office and went up to their place and got a bill from them?      A. Yes, sir.

Q. And came down and told me what the amount was?      A. Yes.

Q. And I inserted it in this document. Do you also remember that there was an account at Chanslor & Lyon Company?      A. \$22, I believe.

Q. And that you went out and got their statement and brought it back to my office?      A. Yes, sir.

Q. Then after getting the amount of bills you knew definitely about you then recall that there was a grocery bill due Mr. Kulzer of Valley, you remember that, do you not?      A. Yes, sir.

Q. And that you did not know the amount of it?  
A. Yes.

Q. But said it was a very small amount, and we decided not to hold up the deal, but simply to make reference in the contract [39] concerning the grocery bill?      A. Yes, sir.

(Testimony of F. M. Helsley.)

Q. And obligate Mr. Cole to assume that bill, whatever it might be, if the contract was executed. Do you remember that? A. I remember it, yes.

Q. And the same was true of a small bill owing to L—— for blacksmithing?

A. That is not what I would call a small bill, no.

Q. Well, whatever the bill was. A. Yes.

Q. Then after we got this information all reduced to writing it was the understanding that it was to be executed before the money was to be paid over, was it not?

A. Why, no, I didn't understand it that way.

Q. Did you understand that we were drawing up a written contract, but did not intend to have it signed?

A. Why, I thought you would have it signed, yes.

Q. And you expected to sign it? A. I did.

Q. And this was on Wednesday, the 18th of July?

A. I think that was the date, yes.

Q. Five days after this conversation you had with Mr. Cole, in the Spokane & Eastern Trust Company? Yes, that speaks for itself, of course. Now, from whom did you expect to get the money if this contract was signed?

A. From the American Mineral Production Company.

Q. But through whom? A. T. P. Smith.

Q. Did you expect to get it through our office?

A. I did not.

Q. You knew that Mr. Cole was going to forward



(Testimony of F. M. Helsley.)

this money to be paid out through our office, did you not? [40]

A. Through Mr. T. P. Smith; he was the man instructed by Mr. Cole.

Q. How did you know that he was instructed by Mr. Cole?

A. I was present at the conversation.

Q. When?      A. On Saturday.

Q. Did Mr. Cole tell you that the money would be forwarded to our office?      A. He did not.

Q. Anyway, I told you it would, did I not?

A. I don't recall.

Q. Will you say that I did not?

A. I won't say that, no.

Q. Isn't it a fact that I showed you a telegram from Mr. Cole, in which he said he would forward the money to be paid out on our order, if the contract was executed?

Mr. JESSEPH.—Just a minute. I object to that as not proper cross-examination, and not the best evidence. If they want to prove something that was in a telegram, I think they ought to produce it.

The COURT.—I think so. I think they are entitled to see the telegram.

Q. When did you expect the money to be paid?

A. On Wednesday morning during banking hours.

Q. Well, it was not paid at that time, was it?

A. No, sir.

Q. Well, then, was there any other date set at which you expected it to be paid?      A. No, sir.

Q. Isn't it true that there was some talk about it.



(Testimony of F. M. Helsley.)

being paid at the opening of banking hours on Friday?

A. There was lots of talk about it, yes. [41]

Q. Well, there was some talk about it, wasn't there? A. I think so, yes.

Q. What transpired between Wednesday the 18th and Friday the 20th?

A. There was nothing in the way of money.

Q. Well, there—were there any negotiations between the parties?

A. Nothing more than Mr. Kover and I would come up to your office every little while to see if you had gotten the money.

Q. What did you come up for?

A. What did we come up for?

Q. Yes, what were you coming up to my office for?

A. To see if this money had come.

Q. So that you did know that the money was to come through us?

A. Through Mr. T. P. Smith. He was at your office from daylight to dark.

Q. Wasn't Mr. Smith at the Davenport Hotel during this time? A. Very little.

Q. Weren't you there? A. I was.

Q. Didn't you see him there?

A. At meal times and when he would go to bed.

Q. And you saw him there in the lobby with Mr. Kover? A. A time or two.

Q. So that you did not have to come up to my office to see Mr. Smith about the money, did you?

A. I did, yes.

(Testimony of F. M. Helsley.)

Q. At the time of these negotiations which were being conducted in my office, was there any of the purchase price due Waterhouse Motor Company overdue? A. There was.

Q. How much? [42]

A. I think \$2,200, or something like that.

Q. And what, if anything, was Mr. Kover seeing about this overdue account?

Mr. JESSEPH.—I object to it as improper cross-examination, immaterial, incompetent and irrelevant.

Mr. CAREY.—I am referring now to the same transaction in my office.

The COURT.—I think all the negotiations between these parties in relation to this sale or transfer are so connected together that it is proper cross-examination.

A. Mr. Kover wanted his money.

Q. And was he threatening to take any legal steps to obtain it? A. At what time?

Q. At any of this time that intervened between Wednesday the 18th and a few days later, at the time you say you were waiting for money?

A. He was wanting his money, yes.

Q. Did he at that time express the intention of taking any steps to get it, or to force such payment?

A. I don't remember of it, no.

Q. Do you not recall that he was insisting both to you and to myself that unless this amount was paid at once that he would foreclose on the trucks?

Mr. JESSEPH.—I object to the question as in-

(Testimony of F. M. Helsley.)

definite, if the Court please. He does not fix the time. Now, here are some negotiations that extended, according to the cross-examination, over Wednesday, Thursday and Friday, and no time is fixed in the question as to when, if he ever, made any such threats, and when they were made.

The COURT.—If the witness can recall anything he may answer. The question is somewhat general.

Mr. CAREY.—I asked him at any time during those two days? [43]

A. I could not recall it as to those two days, no.

Q. At this time did you have an attorney acting for you? A. Why, I did and I did not.

Q. Mr. Del Carey Smith was acting for you?

A. Mr. Cowan, yes.

Q. Wasn't Mr. Del Carey Smith acting for you also? A. Yes.

Q. And he was in my office with you at different times? A. I think once.

Q. Now, I call your attention specifically, Mr. Helsley, to a conversation that took place between you, Mr. Kover, Mr. Smith and myself, on the afternoon of Thursday, the 19th of July, in the extreme east end of the lobby of the Davenport Hotel. Do you remember such an occasion?

A. I remember the occasion, yes.

Q. Do you remember that you and I met each other down at the main entrance of the Davenport Hotel, on Sprague Avenue, and walked into the lobby together and met your wife who was sitting in the Davenport, sitting in the settee there; do you re-



(Testimony of F. M. Helsley.)

member that? A. I think I recall it, yes.

Q. And then you remember we walked over to the east end of the lobby and met Mr. Kover, do you not?

A. We met Mr. Kover at the hotel, yes.

Q. He was sitting at the table there writing a telegram, was he not? A. I don't recall it.

Q. You remember that he was writing, do you not? A. I don't recall that.

Q. You remember that on that occasion I showed Mr. Kover a telegram, and told him I understood the money would be here the next day, Friday?

A. I don't remember you showing him a telegram. I remember [44] you telling Mr. Kover and I that the money would be here.

Q. And do you remember that on that occasion Mr. Kover said that he would not wait any longer?

A. No, I don't recall it.

Q. That he was going to foreclose immediately?

A. No.

Q. And that we had quite an extensive discussion there? A. I don't recall that.

Q. You don't recall that discussion at all?

A. No, I do not, not those words.

Q. What is that? A. Not those words.

Q. Well, do you recall anything about it?

A. No, not on the foreclosure.

Q. Well, what do you recall about it.

A. Nothing, no conversation that you had there with him.

Q. You cannot recall anything that passed between Mr. Kover and myself on that occasion?



(Testimony of F. M. Helsley.)

A. I do not.

Q. You would not be able to say, then, that on that occasion Mr. Kover did not threaten to foreclose?

A. No, sir.

Q. When was the first, then, that you learned that Mr. Cole would not complete this deal? On what day and date?

A. It was either Friday evening or Saturday morning, I cannot recall just which.

Q. Friday or Saturday?      A. Yes.

Q. Who informed you?      A. You did.

Q. I did?

A. Yes, sir. I say you—either you or Mr. Smith, I would not [45] say positively.

Q. You don't remember which one it was?

A. I would not say positively, no.

Q. And do you recall the reason?

A. No, I do not.

Q. You don't remember what reason was assigned for not completing the deal?

A. Anything more than Mr. Cole would not put up the money.

Q. Don't you remember that it was myself that told you?

A. I could not recall whether it was you or Mr. Smith.

Q. Don't you remember that I showed you a telegram from Mr. Cole?

A. You never showed me a telegram.

Q. I never showed you a telegram?      A. No, sir.

Q. However, this, you say, was on the evening of

(Testimony of F. M. Helsley.)

Friday or the morning of Saturday?

A. No, the afternoon of either Friday or Saturday.

Q. That would be the 20th or 21st? A. Yes.

Q. And that was the first information you had that Mr. Cole would not execute the written instrument? A. Yes, sir.

Q. And did I understand you to say no reason was assigned for his refusal?

A. I did not hear any reason.

Q. How is that?

A. I don't remember of you stating any reason at that time.

Q. Did I at any time? A. Not to me, no.

Q. Shortly after this, Mr. Jesseph, as attorney for the Waterhouse-Sands Motor Company, started a foreclosure proceeding [46] to foreclose a chattel mortgage, did he not? A. He did.

Mr. JESSEPH.—Objected to as not proper cross-examination, and move to strike.

The COURT.—I don't see the materiality of that exactly.

Mr. CAREY.—It is material, your Honor, bearing upon the question of delivery.

The COURT.—He may answer.

Q. Now, you were served with notice in that case, were you not? A. Yes, sir.

The COURT.—When was this?

Mr. CAREY.—I was just going to identify it. I now hand you a document and ask you if this is a

(Testimony of F. M. Helsley.)

copy of the foreclosure notice that was served upon you.

A. Yes, sir.

Q. Did you defend that action?

A. Did I defend it?

Q. Yes.      A. No.

Mr. JESSEPH.—I object to it as not proper cross-examination and incompetent, irrelevant and immaterial.

The COURT.—I think this is getting outside the direct examination pretty far.

Mr. CAREY.—No, your Honor. This witness has undertaken to give testimony concerning the delivery of these contracts.

The COURT.—What is the date of this notice?

Mr. CAREY.—This is July 21st.

The COURT.—He claimed he made delivery two or three weeks before that. I don't see what the foreclosure proceedings would have to do with this.

Mr. CAREY.—Well, I am trying to show what the facts are.

Mr. JESSEPH.—If your Honor please, nobody has had anything [47] to do with the preparation of that notice that could bind anybody to this suit. I might have made your Honor or Mr. Helsley parties to this foreclosure, and it would not be binding to anybody. Because I made Mr. Helsley a party to the foreclosure does not signify that Mr. Helsley owned the trucks.

Mr. CAREY.—He has testified that that is the

(Testimony of F. M. Helsley.)

amount due them under the contract of Waterhouse-Sands Motor Company.

The COURT.—And he testified he surrendered possession of them to these parties some time in—

Mr. JESSEPH.—On the 14th of July.

The COURT.—On the 14th of July, immediately after the negotiations of Saturday.

Mr. JESSEPH.—I am undertaking to show, your honor, that the sheriff took them from people who were holding them for him on the 21st.

The COURT.—Unless you expect to prove something beyond the adverse claims of a third party, I will have to sustain the objection.

Mr. CAREY.—Well, perhaps I had better pass to something else first, then.

Q. When you came to Spokane for the purpose of conducting these negotiations with Mr. Cole, on the 13th, I assume you left Valley the day before, did you?     A. I did not.

Q. When did you leave Valley?

A. On the morning of the 13th.

Q. And got down here about noon?

A. No, sir.

Q. What time?

A. Must have been here about nine or ten o'clock.

Q. And you saw Mr. Cole in the Spokane & Eastern Trust Company before the close of banking hours that day? [48]     A. Yes, sir.

Q. You had been operating under this contract (exhibit 1), up to that time, had you not?

A. Yes, sir.



(Testimony of F. M. Helsley.)

Q. How many men did you have employed?

A. Thirteen.

Q. Who was your foreman while you were operating?

A. I had two foremen, a day and night foreman.

Q. Who were they?

A. Steven Bunyard and Moore.

Q. Who?      A. E. J. Bunyard.

Q. He had been employed by you as foreman for how long?

A. I don't recall the day I put him to work.

Q. Well, about how long?

The COURT.—About how many months or weeks?

A. Well, I should think about six weeks.

Q. About six weeks?

A. Something like that, I didn't know positively.

Q. Prior to July 14th?      A. Yes.

Q. And when you left Valley to come down here to see Mr. Cole, you left the trucks in charge or under the direction of this man who had been your foreman for about six weeks before?

A. The trucks were not working.

Q. I didn't ask you that, but I say you left the trucks in charge of this man who had been your foreman while they were working.

A. I don't recall leaving anyone in charge.

Q. You just went away and walked off away from \$20,000 worth of property, and did not leave anybody in charge of it?

(Testimony of F. M. Helsley.)

Mr. JESSEPH.—I object to that question as argumentative, if [49] your Honor please.

The COURT.—Yes.

Q. What did you do with the trucks?

A. They were there in the town of Valley.

Q. They had been in your charge up to the time you took the train?      A. Yes, sir.

Q. And you say you left nobody in charge of them?      A. No, sir.

Q. Did you ever go back?      A. Yes, sir.

Q. Were you back there on the 14th?

A. Yes, sir.

Q. Did you come away from there again on the 14th?      A. No, sir.

Q. When did you come away again?

A. On Wednesday morning, the 18th.

Q. Wednesday morning, the 18th?

A. I think so, yes.

Q. And were the trucks working then?

A. They were.

Q. Under whose direction?

A. Under the American Mineral Production Company.

Q. Who was in charge?

A. Mr. Bunyard, as foreman.

Q. When had he left your employ?

A. On the 13th day of July.

Q. On the 13th day of July?

A. On the first day of July. The company assumed the indebtedness and paid all bills and all labor from the first day of July on.

(Testimony of F. M. Helsley.)

Q. When did they assume it? [50]

A. On the 13th day of July, on Saturday.

Q. Well, you say you did not have any negotiations with Mr. Cole until the 13th?

A. The 13th, that was the day.

Q. You mean to say then that Mr. Cole simply agreed to assume past indebtedness?

A. He did.

Q. Is that it? A. He did.

Q. But the trucks were being actually worked by you, and the indebtedness was incurred by you yourself? A. Yes, sir.

Q. Up to and including the 13th? A. Yes, sir.

Q. And when you went away on the 13th the trucks were still left just in the same situation that they were at the time that they were operated by you prior to the 13th, were they not?

A. They were there in Valley, yes.

Q. I say, they were just exactly in the same situation as they were prior to the 13th when they were being operated by you, in the same place, under the same control? A. Yes, sir.

Q. And that likewise was true when you came down here on the 18th? A. No, sir.

Q. Well, what had happened between the 13th and the 18th?

A. The company had taken the operating of the trucks. I turned my key to the oil house over to them, and they put their own men in charge of them.

Q. You say the company had taken charge of them? A. Yes, sir.

(Testimony of F. M. Helsley.)

Q. When was that? [51]

A. On Monday, the following Monday after the 13th.

Q. That would be the 15th? As that was in anticipation of the execution of the contract that you came down here to Spokane to execute, was it not?

Mr. JESSEPH.—I object to that. It calls for a conclusion, and is argumentative.

The COURT.—You can ask him the circumstances under which they took possession, if they did.

Q. Well, whatever was done, on Monday the 15th, was done in anticipation of the execution of this written contract that you came down to prepare, was it not?

Mr. JESSEPH.—I object to that, if your Honor please. That is not a fair question, that it was done in anticipation of anything, also a conclusion, and does not call for the facts.

The COURT.—He can state the circumstances under which it was taken over.

A. There was no anticipation on my part. I considered the deal closed.

Q. You knew that you were coming down here to Spokane to execute a written contract, didn't you?

A. I knew I was coming down to get my money, or tried to.

Q. And you expected that this contract would be reduced to writing, didn't you? A. I did.

Q. And you came up to my office for that purpose?

A. I did.

Q. And when you left there on the 15th, Monday



(Testimony of F. M. Helsley.)

the 15th, you expected at that time that the sale would be completed?

A. I did not leave Valley on the 14th.

Q. I say on the 15th?

A. On the 15th. I left Valley Wednesday morning, the 18th. [52]

Q. Were you in Valley from the 13th to the 18th?

A. No, sir.

Q. Well, where were you between the 13th and the 18th?

A. I was at Deer Lake fishing most of the time.

Q. When did you go there? When did you go fishing, on what day? A. Most every day.

Q. Where is Deer Lake, then?

A. About nine miles from Valley.

Q. When did you leave Valley for Deer Lake?

A. I don't remember the hour.

Q. What day?

A. Well, I went Monday and Tuesday, two days.

The COURT.—You were back at Valley at night, were you? A. Yes, sir.

Q. And what officers of the company, if any, did you talk to on Monday and Tuesday?

A. Mr. Brunt and Mr. Smith.

Q. Mr. Brunt and Mr. Smith? A. T. P. Smith.

Q. Mr. Smith is a bookkeeper?

A. An accountant, yes.

Q. And then you came down here on Wednesday, didn't you, with Mr. Smith? A. Yes, sir.

Q. You suspended fishing operations for that day?

A. I did.

(Testimony of F. M. Helsley.)

Q. What conversation did you have with Mr. Brunt? A. Mr. Brunt wanted me to—

Q. Just a minute. On Monday the 15th, or Tuesday the 16th?

A. On the 15th, on Monday, Mr. Brunt wanted me to take charge of the equipment on a salary, and run it for them and I would not [53] consider it. He asked me if I could recommend anyone, and I told him yes that I could; I recommended Mr. Bunyard.

Q. That is the same man who had been your foreman for some six weeks before? A. Yes.

Q. And whose salary from the first of July was to be assumed by the Mineral Company, if the contract of purchase went through? A. Yes, sir.

Q. You did not discharge Mr. Bunyard?

A. I did not.

Q. You simply expected the Mineral Company to take him over along with the plant?

A. I did not.

Q. Well, you recommended that they do it?

A. I did.

Q. And this was on Monday the 15th?

A. The 15th.

Q. And you say at that time Mr. Brunt had some conversation with you about you personally continuing to run the trucks for the company after the purchase was completed? A. Yes, sir.

Q. But you did not come to any agreement as to that? A. I did not.

Q. Is that the only conversation you had with Mr. Brunt on that day?

(Testimony of F. M. Helsley.)

A. I don't recall whether it was or not. I remember that conversation that I had with him.

Q. Where was this conversation?

A. Right near their office at Valley.

Q. And did you have any conversation with him on the next day before you went fishing?

A. I don't recall it. [54]

Q. You were out of town all day the next day, were you? A. Not all day, no.

Q. That in substance is the only conversation you had with Mr. Brunt about the matter, is it, on those days? A. I think so, yes.

Q. Now, where were the trucks at this time?

A. Oh, they were there in Valley. They were working, and up and down the road. They were all over between the town and the quarries.

Q. They were working at this time, were they?

A. Yes.

Q. Under the direction of Mr. Bunyard?

A. After Monday, yes. On Monday he took charge.

Q. Where was Mr. Smith at this time, on Monday and Tuesday, the 15th and 16th? A. In Valley.

Q. What was he doing?

A. I could not tell you.

Q. You did not have any talk with him then?

A. Yes, sir.

Q. About what?

A. Why, I had no talk with Mr. Smith. That was in the presence of Mr. Smith.

Q. How is that?

(Testimony of F. M. Helsley.)

A. Mr. Brunt and I had the conversation regarding Mr. Bunyard taking charge of the equipment, in the presence of Mr. Smith.

Q. And that is all the negotiations you had with Mr. Smith on those two days?      A. I think so.

Q. What had you done on Sunday the 14th, if anything, in connection with this deal?

A. I don't recall what I did on Sunday. [55]

Q. You were not fishing that day, were you?

A. It is hard to tell.

Mr. CAREY.—We offer this unsigned contract in evidence as an exhibit.

Thereupon said contract admitted in evidence and marked Defendant's Exhibit 3.

Redirect Examination.

(By Mr. JESSEPH.)

Q. Mr. Helsley, did the American Mineral Production Company ever pay you any money for hauling these trucks, after the Saturday upon which these negotiations took place as you have testified to?

Mr. CAREY.—Objected to as immaterial.

The COURT.—He may answer.

A. No, they never paid me any money.

Q. Do you know a man by the name of Moore who operated or worked for this company at Valley?

A. I do.

Q. Did he ever have anything to do with these trucks?      A. Yes, sir.

Q. When did he get into this truck business?



(Testimony of F. M. Helsley.)

A. Either Monday afternoon or Tuesday morning, the 15th or 16th.

Q. What did he do?

A. He had charge of transportation.

Q. By whom was he employed?

A. By Smith and Brunt.

The COURT.—That is by the company, you mean?

A. Yes, Mr. Brunt and Mr. T. P. Smith.

Q. And what position did he occupy with reference to the job that the company had given to Mr. Bunyard? [56]

A. Mr. Moore was put over Mr. Bunyard, as I understood it.

Q. Did you have anything to do with the employing of Mr. Moore? A. I did not.

Q. Mr. Kover was the credit man of the Waterhouse-Sands Motor Company, wasn't he?

A. Yes, sir.

Q. When you were talking about the unpaid bills in these negotiations, what did you say to Mr. Cole and Mr. Smith about them?

A. Well, I gave Mr. Cole and Mr. Smith the unpaid bills, as near as I could, from recollection. I had none of the statements with me. I did not have my contract with the Waterhouse-Sands Company, and that was partly guesswork, outside of the Firestone Rubber Company.

Q. Did they understand you were giving it the best you could from recollection? A. They did.

The COURT.—He has already testified to it in

(Testimony of F. M. Helsley.)

his direct examination, and also on the cross-examination.

Recross-examination.

(By Mr. CAREY.)

Q. What did Mr. Moore do on the 15th?

A. I could not tell you.

Q. He didn't do anything, so far as you know?

A. I seen him around down there quite busy. I don't know what he was doing.

Q. He did not do anything on the 4th either, so far as you know?

A. I don't know, I am sure.

Q. With reference to these trucks? [57]

A. I don't know.

Q. Nor on the 16th?

A. The 15th, I think the afternoon of the 15th, he was put in charge of transportation.

Q. Now, you say you think. What do you know about it, of your own knowledge?

A. I know that either on the 15th or 16th he was put in charge of transportation.

Q. What do you mean by put in charge of transportation?

A. The moving of magnesite and calcite and supplies.

Q. That is, he was directing the method in which it should be hauled from the mine to the car for the company, is that it?

A. As I understand it, yes.

Q. And you had always been under the direction of somebody, had you not, while you were hauling?

(Testimony of F. M. Helsley.)

A. No.

Q. Didn't anybody connected with the company have anything to say as to when or how you should perform the work under this contract?

A. Why, Mr. Smires, I think, was the only man that ever opened his head to me.

Q. So that the introduction of Mr. Moore in the matter was that Mr. Moore simply took over the function that Mr. Smires had been performing before? A. No, sir.

Q. Well, just exactly what did Mr. Moore do on the 14th or 16th, whenever it was?

A. Well, he was put in charge of the moving of calcite and magnesite.

Q. Were you there at that time?

A. I was around Valley, yes.

Q. What were you doing? [58]

A. I was doing nothing.

Q. How did you happen to know about Mr. Moore?

A. Mr. Brunt told me, and so did Mr. Bunyard.

Q. Did they tell you what he did?

A. He was superintendent. He had charge of moving all of the supplies, magnesite and calcite.

Q. Well, somebody had been doing that for the company before, hadn't they?

A. I had been doing it, yes.

Q. Well, you were doing—you had been doing the hauling?

A. There was no one dictating to me.

Q. Do you mean you were acting as a contractor

(Testimony of F. M. Helsley.)

hauling magnesite and also acting as your own superintendent? A. I was.

Q. Anyway after that time they put a superintendent in charge instead of allowing the contractor to do it himself, is that correct?

A. No, sir, they had charge of the equipment. They were doing the hauling. I had nothing to do with it.

Q. And Mr. Moore, you say, is the man who had charge of it at that time, namely on the 15th and 16th, for the company?

A. The 15th and 16th he was put in charge, yes.

Q. And you don't know of anybody else that was in charge except him? A. Mr. Bunyard.

(Witness excused.)

Thereupon an adjournment was taken until 10:00 A. M., Wednesday, April 24th, 1918, and the Court thereafter duly convened, whereupon the following proceedings were had:

F. M. HELSLEY, recalled, testified as follows:

Cross-examination.

(By Mr. CAREY.) [59]

Q. Mr. Helsley, you stated yesterday that these negotiations with C. R. Cole at the Spokane & Eastern Trust Company were on Saturday, July 13th, did you not?

A. Something near that date. I don't know positively.

Q. I have a calendar here that shows Saturday the middle of July was the 14th? A. It might be.

Q. So that I think we ought to have the record show that Saturday was the 14th and Sunday the



(Testimony of J. E. Bunyard.)

15th and Monday the 16th, and Tuesday the 17th and Wednesday the 18th, instead of as it is.

The COURT.—I suppose the calendar will show all of these things.

Mr. CAREY.—I would like to have it shown by the testimony rather than the calendar.

(Witness excused.)

**Testimony of J. E. Bunyard, for Plaintiff.**

J. E. BUNYARD, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. JESSEPH.)

Q. Your name is E. J. Bunyard?

A. J. E. Bunyard.

Q. You live in the city of Spokane at this time?

A. Yes, sir.

Q. What is your business, Mr. Bunyard?

A. I haven't any right now.

Q. Are you working?

A. No, not at present.

Q. Are you acquainted with Mr. Helsley, the plaintiff in this case?      A. Yes, sir.

Q. Where did you know him?

A. I met him at Valley.      [60]

Q. Are you acquainted with the American Mineral Production Company that is operating at Valley?      A. Yes, sir.

Q. Do you know Mr. C. R. Cole?

A. I have met him, is all.

(Testimony of J. E. Bunyard.)

Q. And Mr. H. H. Brunt?      A. Yes, sir.

Q. Mr. T. P. Smith?      A. Yes, sir.

Q. Did you ever work for the American Mineral Production Company?      A. Yes, sir.

Q. When did you first go to Valley?

A. On the 20th day of last May.

Q. Who were you employed for at that time?

A. Mr. Helsley.

Q. What was he doing there then?

A. Operating trucks, hauling magnesite.

Q. For whom?

A. The American Mineral Production Company.

Q. When did you go to work for the company?

A. The 15th of July.

Q. Who put you to work?      A. H. H. Brunt.

Q. What doing?

A. Foreman of the trucks.

Q. What was said to you at that time, if anything, about the trucks?

A. Mr. Brunt informed me—

Q. By Mr. Brunt or Mr. Smith?

A. Mr. Brunt and Mr. Smith both informed me that they had taken over the trucks, and that I was to be their foreman. [61]

Q. Did they fix your wage?      A. Yes, sir.

Q. Did you act for the company as foreman of the trucks?      A. Yes, sir.

Q. What were your duties?

Mr. CAREY.—That is immaterial.

The COURT.—I don't know that. It is preliminary. He may answer.

(Testimony of J. E. Bunyard.)

A. Why, to see that the trucks were kept in operation, and check in the gas and oils and things like that.

Q. What trucks were these?

A. The trucks that Helsley formerly had.

Q. That had been run by him up there?

A. Yes, sir.

Q. You said, I believe, that you went to work on the 15th of July?

A. Yes, sir, that is the day I went to work for them.

Q. Were these trucks used by the American Mineral Production Company in its business?

A. Certainly.

Q. What did they do with the trucks?

A. Well, they hauled oil to the mine and hauled ore from one mine to another, and then hauled calcine back to Valley.

Q. Did you know of Mr. Helsley having some gasoline and motor oil up at Valley?     A. Yes, sir.

Q. At the time the trucks were turned over?

A. Yes, sir.

Mr. CAREY.—That is immaterial.

Mr. JESSEPH.—It is only a circumstance.

The COURT.—It is a circumstance. Proceed.

Q. What became of that? [62]

A. Why, it was used by the American Mineral Company.

Q. By the American Mineral Production Company?     A. Yes, sir.

Q. In operating the trucks?     A. Yes, sir.

(Testimony of J. E. Bunyard.)

Q. Who paid you for the labor that you did there as foreman on the trucks?

A. The American Mineral Production Company.

Q. For what period of time did they pay you, Mr. Bunyard?     A. From the first day of July.

Q. To what date?

A. To the 21st, I believe it was.

Q. Who drove the trucks during this time?

A. Well, they had the same bunch of boys that Mr. Helsley had.

Q. Who put them to work?     A. I did.

Q. Did you have any directions from anyone as to getting them to operate trucks?     A. Yes, sir.

Q. From whom?

A. Mr. Brunt and Mr. Moore.

Q. Who was Mr. Moore?

A. He was transportation man, I guess you would call him.

Q. Was he your immediate superior officer there or your boss?     A. He was, sir.

Q. Who paid these men that drove the trucks?

A. The American Mineral Production Company.

Q. For what period of time?

A. From the first day of July.

Q. To the 21st?     A. Yes, sir. [63]

Q. Did Mr. Helsley have anything to do with the running of these trucks after you were employed as foreman?     A. No, sir.

Q. Did he ever pay you anything for labor you performed between the first day of July and the 21st?     A. No, sir.



(Testimony of J. E. Bunyard.)

Cross-examination.

(By Mr. CAREY.)

Q. How long have you known Mr. Helsley before you went to work for him on May 20th?

A. I think I met him on the 19th.

Q. And went to work for him the next day?

A. Yes, sir.

Q. As foreman?

A. Not foreman at first, no.

Q. When did you become foreman?

A. Oh, I guess about two or three weeks after I went to work for him.

Q. And you continued to be his foreman up to July 15th? A. Yes, sir.

Q. However, when it came to get your pay for the work you did from July 1st to the 15th, you got that pay from the American Mineral Production Company? A. Yes, sir.

Q. And then it was also paid from the 15th to the 21st by the American Mineral Production Company?

A. Yes, sir.

Q. You say that you met Mr. C. R. Cole once?

A. Just met him there in Valley, yes, sir.

Q. You did not have any conversation with him?

A. None whatever.

Q. You were simply in town there and the employees knew that [64] he was president of the company?

A. Knew that he was connected with the company in some way.

Q. Your meeting with Mr. Cole was purely casual?

(Testimony of J. E. Bunyard.)

A. Yes, sir.

Q. You never did anything concerning the trucks at his direction?      A. No, sir.

Q. Nor were you ever paid by him for any labor performed upon the trucks?

A. Paid by the company.

Q. That is what I say, you were paid by the American Mineral Production Company, and not by Mr. Cole.      A. Yes, sir.

Q. When did you leave the employ of the company?      A. Last Wednesday.

Q. How long have you seen Mr. Helsley between the time you ceased to work for him on July 15th and the time you quit the employ of the company last Wednesday?

A. Oh, possibly I met him two or three times; saw him going through town, or something like that.

Q. When did you meet him?

A. I could not just recall the date. I met him along in the winter, and along this spring some time.

Q. How long prior to the time that you left the company was the last time?

A. The last time I met him was—oh, I guess it must have been about a month ago.

Q. Have you communicated by letter?      A. No.

Q. About this time that you ceased to work for Mr. Helsley and went to work for the American Mineral Production Company, on July 15th, the feeling between you and Mr. Helsley was not [65] particularly friendly, was it?

A. Why, we were not enemies by any means.

(Testimony of J. E. Bunyard.)

Q. How is that?

A. We were not enemies by any means.

Q. I say your feeling was not friendly?

A. Yes, it was.

Q. Don't you remember of having expressed yourself very forcibly concerning Mr. Helsley along about this time?

Mr. JESSEPH.—I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

Mr. CAREY.—It tends to show the interest of the witness.

The COURT.—His feeling would not show his interest.

Mr. CAREY.—I expect to show his interest, yes.

The COURT.—Very well, proceed, then.

A. No, I don't think I made any assertions.

Q. You recall during the period when the situation up there seemed to be in rather an unsettled state, and you men did not know where the money was coming from, that a Mr. Davis went up to arrange to have you paid?      A. Yes, sir.

Q. You remember Mr. Davis?      A. Yes, sir.

Q. And isn't it a fact that upon that occasion that you criticised Mr. Helsley very forcibly to Mr. Davis?

Mr. JESSEPH.—I object to that as incompetent, irrelevant and immaterial.

The COURT.—I don't see the materiality of that. It might be very material from the standpoint of the plaintiffs, if he had testified against them.

(Testimony of J. E. Bunyard.)

Mr. CAREY.—Well, I expect to show it is material very shortly. [66]

The COURT.—You had better come to the materiality first, then.

Mr. CAREY.—I don't care to explain it in the presence of the witness.

The COURT.—Proceed, then.

Q. Will you answer the question?

A. I don't recall making any rank assertions to Mr. Davis.

Q. Isn't it a fact you left the employ of the company a few days ago at the suggestion of Mr. Helsley to come down and testify in this case?

A. I did not, sir.

Q. You did not?      A. No, sir.

(Witness excused.)

**Testimony of J. D. Kulzer, for Plaintiff.**

J. D. KULZER, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. JESSEPH.)

Q. Your name is J. D. Kulzer?      A. Yes.

Q. You live in the town of Valley, do you, Mr. Kulzer?      A. Yes, sir.

Q. In Stevens County?      Yes, sir.

Q. Have lived there for a number of years?

A. Yes, sir.

Q. Engaged in the sawmill business there?

A. Yes, sir.



(Testimony of J. D. Kulzer.)

Q. And have been for some time past?

A. Yes, sir.

Q. Do you know Mr. Helsley, the plaintiff in this case?     A. Yes, sir. [67]

Q. Do you know the American Mineral Production Company and its officers and men at Valley?

A. Yes, sir.

Q. And Mr. Cole, who is president of the company?     A. Yes, sir.

Q. How long have you been acquainted with these people?

A. Well, ever since they came there.

Q. Did you have some dealings with the American Mineral Production Company through its officers at Valley in 1917?     A. Yes, sir.

Q. With reference to a bill that had been owing to you by Mr. Helsley?     A. Yes, sir.

Q. What was done with that bill?

A. Why, before I knew anything about the transaction that occurred between Mr. Helsley and the Mineral Production Company, I had a bill for lumber against Helsley & Company, and one day I met Mr. Helsley in Valley and I said, "Mr. Helsley, I would like that money."

Mr. CAREY.—I object to any conversation between Mr. Helsley and the witness.

The COURT.—Sustain the objection.

Q. Just tell what you did with reference to dealing with the company. You need not detail the circumstances that lead up to it.

(Testimony of J. D. Kulzer.)

A. I wanted the bill paid and he says the bill was—

The COURT.—Never mind, now. You were dealing with the company and its officers. Never mind Mr. Helsley.

A. Oh, the Mineral Production Company?

Mr. JESSEPH.—Yes.

A. I went to Mr. Helsley and asked him if he had assumed—

Mr. CAREY.—I object to any conversation between Mr. Smith [68] and the witness for the reason that no authority of Mr. Smith to act for the American Mineral Production Company is shown.

The COURT.—Sustain the objection, until some authority is shown.

Mr. JESSEPH.—Well, the testimony yesterday was that Mr. Cole, who is admitted, as I understand the facts, to be the president of this company, told Mr. Smith to take over the trucks and gather up these bills, when they appeared at the Spokane & Eastern Trust Company after the deal was closed. Mr. Helsley testified to that himself, as I understand the testimony.

Mr. CAREY.—The evidence on that is that Mr. Smith on that special occasion was acting under special instructions from Mr. Cole as an individual, and not acting on behalf of the company.

Mr. JESSEPH.—There isn't any evidence here that shows he was acting under Mr. Cole as an individual. Mr. Cole was president of the company at that time, and previous to that time.

(Testimony of J. D. Kulzer.)

The COURT.—The trouble is you are suing him here. You are suing the president, and you are suing the company. Now do you claim that this plaintiff was agent for both of them or agent for only one.

Mr. JESSEPH.—If your Honor please, those facts are all in the possession of the other side, and we are, of course, bound by whatever the facts are.

The COURT.—I will let the testimony go in, because it would be binding on the defendant Cole in any event.

Mr. CAREY.—We would like an exception to the Court's ruling.

The COURT.—Yes. State your conversation with Smith.

A. I asked Mr. Smith if they had bought out Helsley and Company and he says, "Yes, sir, we have."

Mr. CAREY.—If who had bought out Helsley & Company?

A. The American Mineral Production Company, and he says, "We have." [69]

Mr. CAREY.—I move to strike the answer for the reason that any statements made by Mr. Smith concerning the American Mineral Production Company is not binding upon that company, and any conversation he had with this witness concerning—

The COURT.—Any conversation you had in regard to the payment of the bill will be admitted, but he can't make any statements binding on the company until his authority is shown.



(Testimony of J. D. Kulzer.)

Q. What was done about the bill? Was it paid by the company?

A. I had to file a lien—after a while they refused to pay it. First they promised to pay it, and they refused to pay it after they got into some controversy, and then I had to file a lien against the property, and found that the—

Mr. CAREY.—Against what property?

The COURT.—The question is was the bill paid.

A. The bill was paid, yes, sir.

Mr. JESSEPH. Q. Who paid it? Whose property did you get that paid it?

A. I got the property there that was taken over there by the Mineral Production Company.

Mr. JESSEPH.—That is all.

Mr. CAREY.—No cross-examination.

(Witness excused.)

Mr. JESSEPH.—Plaintiff rests.

Mr. RUSSELL.—I would like to make a motion at this time, if your Honor pleases.

The COURT.—On what ground?

Mr. RUSSELL.—Well, first we make a motion separately for each defendant. I will first make a motion on behalf of C. R. Cole. I challenge the sufficiency of the evidence and move for a judgment for the defendant on behalf of C. R. Cole, for the reason that the contract that is pleaded in this complaint has not been proven. That whatever evidence there is to show that [70] there was a contract between Mr. Cole and the plaintiff comes within the statute of frauds, is not enforceable; and



that the evidence clearly shows that the contract never was reduced to writing is admitted by the parties, and they have wholly failed to establish the claim against C. R. Cole. There was no delivery to C. R. Cole, according to the evidence as it now stands. On behalf of the American Mineral Production Company I make the same motion, the same challenge and motion for the reason that there is no evidence to show that there was any contract between Mr. Helsley and the American Mineral Production Company; and if there was a contract, the contract that is proved here is not the contract that is pleaded. The contract proven is the contract that Mr. Helsley was selling out his partnership interest, which the American Mineral Production Company, as a corporation, was not authorized to buy; a corporation under the laws of this State not being permitted to enter into a copartnership. It is pleaded and admitted here that the defendant corporation was a South Dakota corporation, but we must assume that the laws of this State in respect to the rights of corporations and powers of corporations by the laws in South Dakota are the same as in this State, unless shown to be different.

(Argument by Mr. Russell. Jury retires.)

The COURT.—At the outset I am at a loss to know upon what theory here the plaintiff claims that there was a joint purchase by Cole in this corporation. There is not an intimation in the testimony on the part of the plaintiff that Cole was acting in-

dividually and as an officer at the same time. He was acting either one way or the other, and it seems to me that the testimony does not justify any other influence.

Mr. JESSEPH.—Of course I do not agree with Mr. Russell about what the testimony shows. I think it shows that Mr. Helsley did testify he was dealing with Mr. Cole as president [71] of this company, and that he sold his interest to the American Mineral Production Company. That is his testimony.

The COURT.—Then he would have no cause of action against Cole.

Mr. JESSEPH.—If your Honor please, it is hard for me to say whether there is or not. At the time this action was commenced you can plainly see that I did not know who was who or how they were going to get at it. In other words, I started it both ways. Now, if I have proven a cause of action against the company, good and well. If I have not proven one against Mr. Cole, good and well. Mr. Helsley, of course, has testified that he was dealing with the corporation. He sold his interest to the company—

The COURT.—I will grant the motion for a nonsuit as to Cole.

Mr. RUSSELL.—Now, in respect to the American Mineral Production Company, it seems to me that the evidence here shows that they had no contract with the American Mineral Production Company. It was clearly contemplated that they would reduce all of these negotiations into writing.

The COURT.—There are some written negotia-

tions afterwards, but the plaintiff here testified exclusively that he agreed to sell whatever interest he had in his trucks to this corporation for \$5,500; that they agreed to pay him the sum of \$5,500 on the following Wednesday, and that the trucks were turned over to the company, and that he delivered the possession which complied with the statute of frauds. That is, the jury is warranted in finding the fact.

Mr. CAREY.—Your Honor has overlooked what Mr. Helsley testified with respect to the written contract which was prepared, which shows very explicitly that the contract or negotiations for a contract between Helsley and Cole was not made with Cole on behalf of the American Mineral Production Company, and there is no pretense that he had any negotiations looking for a contract with anybody else. The contract here which your Honor will [72] remember Mr. Helsley read and admitted, that it represented—

The COURT.—The negotiations that the parties had at that time.

Mr. CAREY.—And there were no other negotiations with anybody concerning the company looking to the fixing of a purchase price between Helsley and the company.

The COURT.—You can't take any inconsistent positions, any more than the plaintiff can. If you claim that Cole was acting in his individual capacity at the time these negotiations were had, I will set aside the order of dismissal as to him, and grant it as to the company.



Mr. CAREY.—And grant it as to the company?

The COURT.—Yes. You have taken one position or the other. Cole was representing the corporation, or he was representing himself.

Mr. CAREY.—I think that is the correct position to take, if your Honor please, that the admitted contract was made between Helsley and Cole and not between Helsley and the company.

Mr. JESSEPH.—What are you going to do with Helsley's testimony? He has testified positively that he dealt with the corporation.

Mr. CAREY.—That is based on Helsley's testimony when he testifies—

The COURT.—This contract you have here is a subsequent transaction entirely to the contract which he testified to in his direct examination. He testified to a full and complete contract of sale and delivery, and then you brought out certain negotiations which took place afterwards. Whether that would be inconsistent with his previous testimony or not is a question for the jury, and not for the Court.

(Argument by counsel.)

The COURT.—I will overrule the motion of nonsuit as to the [73] company and grant it as to Cole, because I don't think there is anything in Helsley's testimony that would warrant a judgment against Cole for a verdict.

Mr. CAREY.—We take exception to the Court's ruling so far as he refused a nonsuit as to the company.

(Jury returns into court.)



The COURT.—The motion for a nonsuit has been granted as to the defendant Cole, so you will be only concerned with the case against the company.

Mr. RUSSELL.—These are the interrogatories propounded to and made by Mr. C. R. Cole:

**Interrogatories and Answers Propounded to and Made by C. R. Cole.**

Interrogatory No. 1. State your name and place of residence.

A. Charles R. Cole, Chicago, Illinois.

No. 2. Are you the C. R. Cole named as the defendant in the above-entitled case? A. I am.

No. 3. Were in Spokane, Washington, in July, 1917? A. I was.

Interrogatory No. 4. Did you meet the plaintiff, Mr. F. M. Helsley, in July, 1917? A. I did.

Interrogatory No. 5. If you state that you did meet Mr. Helsley in July, 1917, state where and when you met Mr. Helsley.

A. It was on a Saturday forenoon in the Davenport Hotel and later at the Spokane and Eastern Trust Company. I think it was July 14th.

Interrogatory No. 6. State what office, if any, you held with the American Mineral Production Company in July, 1917?

A. I was president of the company.

Interrogatory No. 7. State whether or not you, as an individual, had any dealings with Mr. F. M. Helsley about the motor trucks, or any of them mentioned in the amended complaint [74] in this action? A. Yes.

Interrogatory No. 8. If you answer the foregoing in the affirmative, state what those dealings were and where had.

A. When I reached the west the latter part of June I discovered that Mr. Smyers had bought out the interest in the Cashmere Truck Company belonging to one John Wilson and that he had bought same in my name and had signed the papers in my name by himself. That was the first intimation I had that I was a partner in the Cashmere Truck Company. The arrangement was very unsatisfactory to me. On Saturday, July 14, Mr. Helsley met me in Spokane for negotiations. I told him that Wilson's interest had been bought in my name without my knowledge or authority and that I was willing to quitclaim to Mr. Helsley all my interest in said Cashmere Truck Line and to lose the \$5,500 that had been paid providing that he would quitclaim me from any claims on his part. Mr. Helsley represented to me that he could not accept such a proposition because he had no money and that there was \$8,000 due in installment payments on the trucks which he could not pay. This was in the presence of Mr. T. P. Smith. Mr. Helsley further stated that there was sufficient amounts due the Cashmere Truck Line to pay all outstanding obligations except the \$8,000. Mr. Helsley represented that he was about to pay, but offered to sell me his interest for \$5,500, representing that said sum with the \$5,500 already paid and the \$8,000 due on the trucks would represent a total investment of \$19,000 and that said trucks were in his estimation easily worth \$24,000. Helsley

represented that there were no other obligations of any kind. Finally I agreed verbally to accept the proposition on those representations and instructed my attorneys Post, Russell, Carey & Higgins to draw up the papers in accordance with said understanding. I left the same day for Chicago. After my arrival in Chicago I was advised [75] by wire by Mr. T. P. Smith that there was \$1,500 of obligations of the said Cashmere Truck Line over and above what was due said company on accounts receivable and furthermore that the company having a mortgage on the trucks claimed a balance of \$10,600 and some odd dollars instead of \$8,000 as represented by Mr. Helsley. I wired to the attorneys and to Mr. Smith to notify Mr. Helsley that I would only stand by the agreement and representations as made and that he must make good the extra \$1,500 and \$2,600 or the negotiations for the purchase of his interest would be declared off. Mr. Helsley refused to make good the difference and the negotiations were declared off.

Mr. JESSEPH.—I move to strike all of that answer with reference to any misrepresentations with reference to any fund or debt over and above those that he claimed and represented, because there is no issue in this case at all.

The COURT.—The answer will be permitted to stand so far as it is evidence of the negotiations the company had with reference to the sale. The other part is immaterial except in so far as it shows that a contract was actually made. Motion denied.

Mr. RUSSELL.—(Reading:) Interrogatory No.



9. State whether or not you, as an officer of the American Mineral Production Company, had any dealings with Mr. Helsley about the motor trucks or any of the motor trucks mentioned in the amended complaint in this action?      A. I did not.

Interrogatory No. 10. If you answer the foregoing interrogatory in the affirmative, state what those dealings were and where had.

A. (Answered by 9.)

Interrogatory No. 11. State whether or not any memorandum in writing was made relative to the motor trucks mentioned in [76] the amended complaint, or any of them.

A. There was none.

Interrogatory No. 12. If you answer the foregoing interrogatory that there was a memorandum in writing, produce the memorandum and attach the same to your answers to these interrogatories and mark the same "Defendants' Exhibit 1."

A. (Answered by 11.)

Interrogatory No. 13. State whether or not you, as an individual, ever paid any money to F. M. Helsley on account of the purchase price of the motor trucks or any of the motor trucks mentioned in the amended complaint?

A. No.

Interrogatory No. 14. State whether or not you, as an individual, took possession of the motor trucks or any of said motor trucks mentioned in the complaint?

A. I did not.

Interrogatory No. 15. State whether or not you,



as an officer of the American Mineral Production Company, ever paid any money to the plaintiff on account of the motor trucks or any of the motor trucks mentioned in the amended complaint?

A. I did not.

Interrogatory No. 16. State whether or not you, as an officer of the American Mineral Production Company, ever made any memorandum relative to the motor trucks or any of the motor trucks mentioned in the amended complaint?

A. I did not.

Interrogatory No. 17. State whether or not you, as an officer of the American Mineral Production Company, ever took possession of the motor trucks or any of the motor trucks mentioned in the amended complaint?

A. I did not.

Interrogatory No. 18. State whether or not anyone was [77] authorized by the American Mineral Production Company to pay any money to the said plaintiff on account of motor trucks or any of the motor trucks mentioned in the amended complaint?

A. There was not.

Interrogatory No. 19. If you answer the foregoing interrogatory in the affirmative, state the name of said person.

A. (Answered by 18.)

Interrogatory No. 20. If you answer said interrogatory in the affirmative, state whether or not such person, if you know, ever paid any money to the said F. M. Helsley on account of the motor trucks

or any of the motor trucks mentioned in the amended complaint?

A. (Answered by 18.)

Interrogatory No. 21. State whether or not anyone was authorized by the American Mineral Production Company to take possession of the motor trucks or any of the motor trucks mentioned in the amended complaint for and on behalf of the American Mineral Production Company?

A. There was not.

Interrogatory No. 22. If you answer the foregoing interrogatory in the affirmative, state the name of the person so authorized.

A. (Answered by 21.)

Interrogatory No. 23. State if you know whether or not any person so authorized did take possession of the motor trucks or any of the motor trucks mentioned in the amended complaint for and on behalf of the American Mineral Production Company?

A. Not to my knowledge.

Interrogatory No. 24. State whether or not T. P. Smith was an officer or agent of the American Mineral Production Company in July, 1917?

A. He was an employee.

Interrogatory No. 25. If you answer that the said T. P. Smith [78] was an officer of the American Mineral Production Company in July, 1917, state what office he held with said company, or if he be an agent, state what authority he had to represent the American Mineral Production Company in connection with any negotiations relating

to the trucks or any of the trucks mentioned in the amended complaint.

A. He had no authority to represent the American Mineral Production Company in that connection.

Interrogatory No. 26. State whether or not you authorized anyone, for and on your behalf as an individual to pay any money to said F. M. Helsley for and on account of the motor trucks or any of the motor trucks mentioned in the amended complaint.

A. I authorized Post, Russell, Carey & Higgins to pay the \$5,500 providing that the property was transferred as per agreement free from any obligations excepting the \$8,000 mortgage on same as represented by said F. M. Helsley.

Interrogatory No. 27. State whether or not you authorized anyone, for and on your behalf as an individual to take possession of the motor trucks or any of the motor trucks mentioned in the amended complaint? A. I did not.

Interrogatory No. 28. If you answer that someone was authorized to pay any money for you as an individual on account of the said motor trucks or any of them, state his name.

A. Mr. Carey of the firm of Post, Russell, Carey & Higgins.

Interrogatory No. 29. If you state that anyone was authorized to take possession of the motor trucks or any of them for you as an individual, state his name. A. There was none.

Interrogatory No. 30. State in full all and any transactions you as an individual had with the said



F. M. Helsley relating to the motor trucks or any of the motor trucks mentioned in the [79] amended complaint.

A. That was answered in my answer to question 8.

Interrogatory No. 31. State in full all the transactions you as an officer of the American Mineral Production Company had with the said F. M. Helsley on account of the motor trucks or any of the motor trucks mentioned in the amended complaint.

A. I had none.

Interrogatory No. 32. Do you know H. W. Smyers? A. I do.

Interrogatory No. 33. State whether or not H. W. Smyers represented you in any transaction with F. M. Helsley relating to the motor trucks or any of the motor trucks mentioned in the amended complaint. A. No.

Interrogatory No. 34. If you say that H. W. Smyers did represent you, state in what way he was to represent you in any such transactions. Answer in full.

A. He was not to represent me. I knew nothing about it until it was all over.

Mr. RUSSELL.—I will now read the cross-interrogatories propounded to C. R. Cole. (Reading:)

Cross-Interrogatory No. 1. How long have you been acquainted with the plaintiff in this case?

A. I met him the first time in June, 1917.

Cross-Interrogatory No. 2. Where is the principal place of business of the American Mineral Production Company. A. Valley, Washington.

Cross-Interrogatory No. 3. Were you in 1917 ac-



acquainted with the copartnership known as the Cashmere Truck Line? A. Yes.

Cross-Interrogatory No. 4. Were you acquainted with John Wilson, one of the copartners in this concern? [80] A. I was not.

Cross-Interrogatory No. 5. Who was the other copartner? A. F. M. Helsley.

Cross-Interrogatory No. 6. When, if you ever, did you purchase Wilson's interest in this concern?

A. The purchase was made in my name by H. W. Smyers without my knowledge and authority and I knew nothing until my arrival in Valley the latter part of June.

Cross-Interrogatory No. 7. What business was this concern carrying on in the summer of 1917?

A. Doing a general trucking business.

Cross-Interrogatory No. 8. Were you acquainted with the trucks and equipment owned and operated by this copartnership? A. I was not.

Cross-Interrogatory No. 9. When you purchased Wilson's interest in the truck line was it purchased for yourself or for the American Mineral Production Company?

A. It was purchased for myself by H. W. Smyers.

Cross-Interrogatory No. 10. In July, 1917, were you the president of the American Mineral Production Company? A. I was.

Cross-Interrogatory No. 11. In what business was the American Mineral Production Company engaged at that time and where was it operating?

A. Was engaged in mining and shipping magne-

site at its offices, being located at Valley, Washington.

Cross-Interrogatory No. 12. Did you not, in the business room of the Spokane & Eastern Trust Company, at Spokane, in July, 1917, purchase Helsley's interest in the trucks mentioned in the amended complaint in this action for the sum of \$5,500?

A. I agreed to purchase his interest in the trucks at that price subject to a certain representation made by him which [81] afterward proved to be false.

Cross-Interrogatory No. 13. Were you acting for yourself at this time or for and on behalf of the American Mineral Production Company?

A. For myself.

Cross-Interrogatory No. 14. Where did you go after leaving Spokane on the 14th day of July, 1917?

A. Left immediately for Chicago.

Cross-Interrogatory No. 15. Were you at the town of Valley, in Stevens County, Washington, at any time in the month of July, 1917, after the 14th day of said month? A. I was not.

Cross-Interrogatory No. 16. Are you acquainted with one H. H. Brunt? A. I am.

Cross-Interrogatory No. 17. What official position did he hold with the American Mineral Production Company in July, 1917?

A. He was sales manager.

Cross-Interrogatory No. 18. Who operated the trucks mentioned in the amended complaint after the 14th day of July, 1917? A. I was not.

Cross-Interrogatory No. 19. Do you know a man

at Valley by the name of Bunyard?      A. I was not.

Cross-Interrogatory No. 20. Was he not placed in charge of the trucks mentioned in the amended complaint by the American Mineral Production Company on or about the 14th day of July, 1917?

A. Not to my knowledge.

Cross-Interrogatory No. 21. Beginning on or about the 14th day of July, 1917, did not the American Mineral Production [82] Company employ and pay men to operate the trucks mentioned in the amended complaint for the defendant corporation?

A. Not to my knowledge.

Mr. RUSSELL.—I will read the interrogatories propounded to T. P. Smith and his answers. (Reading:)

**Interrogatories and Answers Propounded to and Made by T. P. Smith.**

Interrogatory No. 1. State your name and address.

A. Thomas Phoenix Smith; 4454 N. Racine Avenue, Chicago, Ill.

Interrogatory No. 2. Do you know F. M. Helsley?

A. Yes.

Interrogatory No. 3. Were you connected in any way with the American Mineral Production Company during the year 1917?      A. Yes.

Interrogatory No. 4. State whether or not you had any transactions or any dealings with F. M. Helsley on account of the motor trucks or any of the motor trucks mentioned in the amended complaint in the above-entitled cause.      A. Yes.



Interrogatory No. 5. If you state that you did have some dealings with said F. M. Helsley on account of the said motor trucks or any of them for and on behalf of the American Mineral Production Company, state in detail what these dealings were.

A. None.

Interrogatory No. 6. State whether or not you had any dealings with F. M. Helsley on account of the motor trucks or any of the motor trucks mentioned in the amended complaint for and on behalf of C. R. Cole? A. Yes.

Interrogatory No. 7. If you state that you did have dealings with the said F. M. Helsley on account of said motor trucks for and on behalf of C. R. Cole, state in detail what dealings you had with the said F. M. Helsley on that account.

A. I met Mr. Cole and Mr. Helsley at the Davenport Hotel, [83] Spokane, on July 14, 1917. Went to the Spokane and Eastern Trust Company Bank with Mr. Cole, Helsley and Mr. Cowan, Mr. Helsley's attorney. Mr. Cole there made a proposition to transfer his, Mr. Cole's interest in the Cashmere Truck Line to F. M. Helsley, but this offer was refused. Mr. Cole then told me to talk things over with Helsley and get his ideas. This I did. Helsley then offered to sell his interest to Mr. Cole for five and one-half thousand dollars, Mr. Cole taking over all liabilities which Helsley said were as follows: Due Waterhouse-Sands, \$8,000—accounts payable five to six hundred dollars more. Mr. Cole and I discussed this at length and he told Helsley he would accept at the figures given, we taking line



as from 21st of July. Mr. Cole instructed me to see Mr. Carey to draw up the contract, as he was leaving for Chicago that same evening. If his train was on time at Chicago he would remit the money that day, namely Tuesday.

Interrogatory No. 8. State what position, if any, you had with the American Mineral Production Company in the year 1917, and particularly in July, 1917. A. I was chief clerk there.

Interrogatory No. 9. State whether or not you are authorized by the American Mineral Production Company to represent it in any transaction with F. M. Helsley on account of the motor trucks or any of the motor trucks mentioned in the amended complaint in the month of July, 1917.

A. No.

Mr. RUSSELL.—I will now read the cross-interrogatories. (Reading:)

Cross-Interrogatory No. 1. Were you the book-keeper for the American Mineral Production Company in July, 1917?

A. Yes.

Cross-Interrogatory No. 2. Did you meet F. M. Helsley, the plaintiff in this action, in the city of Spokane in July, 1917? [84]

A. Yes.

Cross-Interrogatory No. 3. If you answer that you did, state where you met him and who was present?

A. Davenport Hotel, Spokane, the 14th of July. Present, Mr. C. R. Cole, Mr. Cowan, Mr. Helsley and myself.

Cross-Interrogatory No. 4. Are you acquainted with a Mr. Cowan who resides in the city of Spokane? A. Yes.

Cross-Interrogatory No. 5. Were you present in the business room of the Spokane and Eastern Trust Company in Spokane on or about July 14, 1917, when the negotiations for the sale of the trucks mentioned in the amended complaint to the American Mineral Production Company were closed?

A. No.

Cross-Interrogatory No. 6. If you answer the foregoing interrogatory in the affirmative, state what the consideration was for the sale of these trucks to the defendant corporation?

A. (Answered by 5.)

Cross-Interrogatory No. 7. Were you at the town of Valley in Stevens County, Washington, in July, 1917?

A. Yes.

Cross-Interrogatory No. 8. Who, if anyone, operated the trucks mentioned in the amended complaint after July 14, 1917?

A. They were not operated to my knowledge.

Cross-Interrogatory No. 9. Did the American Mineral Production Company employ any men to operate the trucks mentioned in the amended complaint after July 14, 1917?

A. No.

Cross-Interrogatory No. 10. Did you not, in a conversation with John Kulzer, at the office of the American Mineral Production Company at Valley on July 16, 1917, he and you only being present, in

substance say: The American Mineral Production Company has [85] purchased Helsley's interest in the trucks and will pay all outstanding bills?

A. No, I did not.

Mr. CAREY.—We object to that for the reason already ruled by your Honor when Mr. Kulzer was on the stand, a conversation between Smith and Kulzer.

The COURT.—It comes up here as an impeaching question.

Mr. CAREY.—Well, if the plaintiff cannot show the contract, I don't see why they are entitled to ask this question.

Mr. ZENT.—I take it that it is a question for the jury to decide.

The COURT.—Read the answer.

Mr. CAREY.—Exception.

Mr. RUSSELL.—(Reading:) “A. No, I did not.”

### **Testimony of Stephen B. Carey, for Defendants.**

STEPHEN B. CAREY, called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

#### Direct Examination.

(By Mr. RUSSELL.)

Q. State your name to the jury.

A. Stephen B. Carey.

Q. What is your business?

A. I am an attorney.

Q. That was your business in July, 1915?

A. Yes, sir.

(Testimony of Stephen B. Carey.)

Q. You are the Mr. Carey who was a member of the firm of Post, Russell, Carey & Higgins at that time? A. Yes, sir.

Q. And you were representing Mr. Cole in this transaction with Mr. Helsley? A. I was.

Q. You had a talk with Mr. Helsley in reference to this transaction? [86]

A. A conference with him?

Q. Yes. A. Several of them.

Q. I will ask you to state, you know all about that, just how this transaction came up and what took place.

Mr. JESSEPH.—I object as indefinite. I think that a time should be fixed.

The COURT.—When did you first meet him?

A. Mr. Helsley and Mr. Cole, say during the middle of the week, I think on Wednesday, July 18th. It may have been on Tuesday before, the 17th. It was on one day of the other.

The COURT.—That is the first day you met Mr. Helsley?

A. No. In connection with this matter. I had met Mr. Helsley before, several months before. I had met Mr. Helsley first about June 1st when they were buying out the Wilson interest. But the first I met him in connection with this matter was on the 17th or 18th of July; that would be Tuesday or Wednesday.

The COURT.—You may proceed and state what occurred.

A. Mr. Helsley and Mr. Smith came into my office.



(Testimony of Stephen B. Carey.)

I had previously been advised by Mr. Cole that they would be there. At the same time Mr. Kover came, or if he did not come right at the same time he came in shortly afterwards, and they stated to me—

Mr. RUSSELL.—Q. Who is Mr. Kover?

A. Mr. Kover was the credit man of the Waterhouse-Sands Motor Company of Seattle. And they stated to me that they were there for the purpose of preparing this contract of sale, and I started to ask them questions to get the information that was necessary to prepare a written contract. And they all seemed to have rather vague notions about what the situation was, and it required considerable cross-examination on my part to find [87] out what the facts were. I may say that the four of us were in my office at the time. It finally developed that Mr. Kover claimed that there was \$10,611 due on these trucks. The trucks were bought, as I now recall, on separate contracts, one truck a two-ton truck.

Mr. JESSEPH.—I object to that as immaterial.

A. I am stating what they said at the time. The two-ton truck was bought, as I now recall their statement, at one time, or under one contract, and there was \$950 still due on it. The other three and a half ton trucks, five, were bought at different times or under a different contract, and there was \$9,661 due on them, and that made a total of \$10,611 on the six trucks, together with interest. The interest was figured up at the time, and I don't remember just exactly what it amounted to. Then the question came up as to what other outstanding liabilities

(Testimony of Stephen B. Carey.)

there were to be provided for in this written contract, and I asked Mr. Helsley about it and he seemed to have a very vague notion as to just what bills he did owe.

Mr. JESSEPH.—I move to strike that on the ground it is a conclusion.

The COURT.—I will strike it. You may state what was said.

A. Well, Mr. Helsley was not able at first to definitely tell me, but upon my insisting that it was necessary to know what these bills were in order to provide for taking care of them in the contract, from one source and another he had given me a list which appears in this proposed draft of a contract, which was introduced in evidence yesterday. I remember very distinctly that Mr. Helsley gave me to believe that there was a substantial bill due the Firestone Tire & Rubber Company, and I suggested to him, and in fact insisted that he go and find out definitely what the amount of that bill was, which he did. And I think Mr. Smith went with him, on that trip, although I am not positive [88] as to that. Anyway, with this information that he then gave me I drew up this contract for the purpose of having it signed. Even after that Mr. Helsley then discovered that there was an additional bill that he had not given me, Chanslor & Lyon Company, \$26.40, and upon him giving me that information I inserted that in my handwriting in the proposed contract. I told those gentlemen at that time that it was necessary for me to have all of this information in order that

(Testimony of Stephen B. Carey.)

I might advise Mr. Cole what amount of money that it would be necessary—

Mr. JESSEPH.—I object to what he told them. That is immaterial, and it is incompetent and it is irrelevant. The question is here what did they do?

The COURT.—Well, the conversation would be material, would it not?

Mr. JESSEPH.—I don't think that what he told them would be material. I think that what they said and did would be material but what counsel said certainly is not material.

The COURT.—It would be very material if an answer was made to it, and if it was stated in the presence of the parties and no answer was made it would be material. Proceed.

A. I told Mr. Kover, and Mr. Helsley also, I neglected to state, that of this \$10,611 with interest that was due Mr. Kover's company, some \$2,200 of it was overdue and had been overdue for some weeks, and Mr. Kover was pressing all parties that the same be paid up. And I informed Mr. Helsley and Mr. Kover and everybody else there at that time that it was necessary for me to know exactly what amount of liabilities there were in order that I might inform Mr. Cole what amount of money it would be necessary for him to forward in order to take care of the deal and put it through. And as I say, as I now recall, this contract was written on Wednesday the 18th, but matters dragged along for several days awaiting the money from Chicago, and during those [89] days there were continuous conferences back



(Testimony of Stephen B. Carey.)

and forth between us about one thing and another. On Thursday the 19th, I remember very distinctly of having a conversation with Mr. Kover and Mr. Hellsley in the lobby of the Davenport Hotel, along late in the afternoon, in which I informed both of them that the money to take care of the deal was coming from Chicago and coming through me, and I showed Mr. Hellsley on that occasion a telegram from Mr. Cole to me, or to my firm, concerning the money which was to be forwarded.

Q. In these conferences you had with Mr. Hellsley in respect to this transaction, state whether or not anything was ever said about the American Mineral Production Company being a party to the contract.

A. There was not. It was never intimated to me that the American Mineral Production Company had anything to do whatever with the transaction.

Q. You got your information from Mr. Hellsley in respect to the matters set forth in this contract?

A. From Mr. Helsey and Mr. Kover. Now I could not—

Q. They were there at the same time?

A. Oh, yes, they were both there together frequently.

Q. In any of those conferences you had, beginning with July 18th, and continuing, was there anything said by Mr. Hellsley about any contract that he had previous to that time?

A. He never intimated to me in any way that he ever had any contract, any completed contract with anybody up to that time.



(Testimony of Stephen B. Carey.)

Q. When is the first time you ever heard that he made the claim to have an oral contract?

A. The first I ever heard of any claim on the part of Mr. Helsley that he had an oral contract for the sale of these trucks was when he testified here yesterday.

Q. Mr. Carey, these transactions that you had in your office with Mr. Helsley and Mr. Kover, does that relate merely to the [90] sale of trucks, or did it include some other articles?

A. It included all the property mentioned in this contract which I drew up and which was not signed.

Q. You told Mr. Helsley did you not that the money would have to come from Chicago in order to clean this thing up?

A. Yes, that is what the delay was about, awaiting the money to be transmitted to me to close it up.

Q. This form of contract that has been introduced in evidence never was signed by any of the parties named in it?      A. No.

Cross-examination.

(By Mr. JESSEPH.)

Q. Mr. Carey, didn't you ever see a copy of the complaint in this case?      A. Yes.

Q. And also a copy of the amended complaint in this case?      A. Yes.

Q. You knew, then, did you not, that Mr. Helsley was claiming that he sold the trucks by an oral transaction?      A. Yes.

Q. So you did know before yesterday that he claimed an oral deal?

(Testimony of Stephen B. Carey.)

A. Yes. Perhaps I misstated that. I meant that I never heard from Mr. Helsley any statement from him to the effect that he had an oral contract.

Q. Now, these conversations that you have testified to here all took place either on the 17th or the 18th or the 19th, perhaps, of July, of 1917?

A. Well, I would not want to fix it on any particular day. It seems to me, Mr. Jesseph, at the time that they were interminable. I thought that they were lasting a lifetime.

Q. And that got on your nerves a little, I presume? [91]

A. Not particularly, although I was glad to have it over with. Independent of memoranda which I have here, which indicate that it was on Wednesday the 18th, and relying only on my own memory, I would have said that they started on Tuesday the 17th, but I rather think it was Wednesday the 18th.

Q. Well, it was after the 14th or 15th at any event that these conversations occurred? A. Yes.

Q. Mr. Cole was not present at any of these conversations?

A. Mr. Cole had previously had a conversation with me personally, and then went on to Chicago. He was not present at the conversations that I referred to in my previous testimony.

Q. When did he have his conversation with you?

A. Well, it was in the latter part of the week before, but whether it was Friday or Saturday of the week before I could not say.

Q. Were you present at any of these negotiations

(Testimony of Stephen B. Carey.)

at the Spokane & Eastern Trust Company and the Davenport Hotel that the plaintiff has testified to between himself and Cole and Smith?

A. I was not.

Q. You never heard anything about those?

A. No, I did not.

Q. And you don't know what took place there?

A. Absolutely not. I was not there.

Q. Your firm of Post, Russell, Carey & Higgins at this time in July, 1917, were the attorneys for the American Mineral Production Company, were you not? A. Yes, sir.

Q. And you had been the attorneys for the company for some time prior to this?

A. Yes, we had been attorneys for the company ever since they started work up in Stevens County, which, as I recall now, was in [92] October, 1916; along about that time.

Q. You were put—you put in several days negotiating with these people back and forth about this transaction before it finally blew up?

A. Yes, they were in and out, I venture to say, about once an hour every day for several days.

Q. Looking for money?

A. Looking for money and telegrams and information, and for everything.

Q. Your bill for the services was paid, was it?

Mr. RUSSELL.—I object to that as immaterial.

A. I usually expect to have my bills paid, yes.

Mr. JESSEPH.—Q. Beg pardon?

A. I usually try to have my bills paid.



(Testimony of Stephen B. Carey.)

Q. Paid by the American Mineral Production Company?

Mr. RUSSELL.—I object to that as immaterial, if your Honor please.

Mr. JESSEPH.—It is a circumstance.

The COURT.—He may answer, if he knows.

A. I think so, I could not say positively, but I think so.

Mr. JESSEPH.—Q. Mr. Cole at this time was a resident of the city of Chicago? A. Yes, sir.

Q. That was his home?

A. Well, that was his business headquarters. I don't know where his home is.

Q. The only times that he had ever been here were just such times as he made a business trip here in connection with his interest in the American Mineral Production Company?

A. I don't know that, Mr. Jesseph. Mr. Cole did not come to see me except when he was here on business trips. Now whatever trips he may have made, I do not know. [93]

Q. He was the president of the company during all of this time? A. I understand so, yes.

Q. You say that you showed Mr. Helsley a telegram? A. Yes, sir.

Q. Have you got that telegram now?

A. I think so.

Q. The one that you showed them is the one I have in mind?

A. Yes, there is the telegram right there. I guess I broke off my story. I was going to state the cir-



(Testimony of Stephen B. Carey.)  
cumstances under which I showed that.

Mr. JESSEPH.—Mark this.

Said telegram was marked Plaintiff's Exhibit 4 for identification.

Q. I am now showing you exhibit 4. Is that the telegram that you showed them?     A. Yes.

Q. Mr. Kover and Mr. Helsley?     A. Yes.

Mr. JESSEPH.—I am going to offer this, if your Honor please, and ask to read it.

Said telegram admitted in evidence and marked Plaintiff's Exhibit 4.

Mr. JESSEPH.—(Reading.) “Chicago, Illinois. July 19, 1917. Post, Russell, Carey & Higgins, Spokane, Washington. Have wired Spokane and Eastern pay you fifty-eight hundred dollars. Will wire two thousand dollars more covering payments on truck deal. C. R. Cole.”

Redirect Examination.

(By Mr. RUSSELL.)

Q. Do you want to make some statement as to the circumstances under which you showed this telegram to these men?

A. Yes, I intended to state that in my direct examination and got switched off. As I said, these men were in my office [94] during this time, and were expected to get paid through our office but the money did not come. Finally, on the afternoon of Thursday, Mr. Kover, the representative of the Waterhouse-Sands Motor Company and Mr. Helsley had been in a number of times during that afternoon and finally Mr. Kover went back over to the hotel,

(Testimony of Stephen B. Carey.)

and they were very amazed at that time that the money had not arrived. And after they had left the office I received this telegram from Mr. Cole, which was timed 3:09 P. M., in which he had informed me that he had sent fifty-eight hundred dollars to the Spokane & Eastern Trust Company for us, as stated in this telegram, and that two thousand dollars additional would be there the next day. So I immediately went over to the Davenport Hotel, found Mr. Helsley in the lobby. That was the occasion on which I asked him yesterday that I met his wife at the same time, and went and found Mr. Kover, who was sitting in the east end of the lobby and I showed them this telegram for the purpose of indicating to them that the money would be here or be available the next morning at the opening of the bank. You notice this telegram was received by me after the banks had been closed for the day. Then the next morning, however, I received a telegram from Mr. Cole cancelling my authority to make any payment.

Q. Was that last telegram shown to Mr. Helsley, the one cancelling?

A. I cannot swear positively that I showed Mr. Helsley any telegram except this. I think I did, but I cannot swear to it.

Q. Mr. Carey, you acted as attorney for Mr. Cole in several matters, as well as the American Mineral Production Company, did you?

A. Why, I acted for Mr. Cole in a lot of real estate transactions, in which property was taken in his name personally, but I have every reason to believe

(Testimony of Stephen B. Carey.)

that he in those transactions was acting for the company. [95]

Recross-examination.

(By Mr. JESSEPH.)

Q. The real estate transactions that you mentioned, in which the title was taken in Mr. Cole's name, were for transactions for the American Mineral Production Company?

A. I believe so, Mr. Jesseph.

Q. All of the quarries up there were taken in Mr. Cole's name, the Allen quarry and the Woodbury quarry and the Red Marble?

A. I don't think all of them were. I know some of them were, and I think some of them were taken in the company's name, although I am not positive. I would not know without looking up the record.

Mr. RUSSELL.—Some of them were taken in Mr. Handy's name.

A. Some of them were taken in Mr. Handy's name. (Witness excused.)

Mr. RUSSELL.—We rest, if your Honor please.

Mr. JESSEPH.—No rebuttal.

Mr. RUSSELL.—I would like at this time to renew the motion and challenge the sufficiency of the evidence, and to move for a judgment for the defendant, the American Mineral Production Company, the same as I did before.

The COURT.—I will submit the case to the jury. (Thereupon counsel argued the case to the jury, after which the following proceedings were had:)

The COURT.—There is a preliminary question in



this case, gentlemen, that had not occurred to me. This complaint charges a joint sale to two persons. Now can there be any recovery at all without an amendment of the pleading eliminating Cole from the complaint?

Mr. ZENT.—That question has occurred to me, but the testimony went in without objection, and we desire now to amend to show a sale to the company.

[96]

The COURT.—Eliminating Cole entirely?

Mr. ZENT.—Yes, sir.

Mr. RUSSELL.—I object to any amendment at this time. It seems to me that it comes rather late. If they found that Mr. Cole was not liable, then was the time, if any, when they should have asked leave to change their pleadings. It seems to me that under the conditions here that we should make a motion to dismiss this case for the additional reason that there is a variance between the proof and the pleadings.

The COURT.—That objection was not called to my attention at the time the motion for nonsuit was directed to the other defendant. Had it been, I probably would have directed a nonsuit to both and allow the amendment. If you can show that you will be prejudiced at this time, except purely a technical defect, I will hear from you.

Mr. RUSSELL.—We submit it as we have it, and take an exception.

The COURT.—I will allow the amendment.

Gentlemen of the Jury, the issue in this case is very simple. This complaint as amended charges



that on the 14th day of July, 1917, the defendant, the American Mineral Production Company, for a consideration of the sum of \$5,500 orally purchased from the plaintiff, and the plaintiff sold to that defendant all of its right, title and interest in and to six motor trucks situated in the town of Valley, Stevens County, Washington, and particularly described as follows: Then follows a description of the six trucks. That the defendant immediately after said sale took possession of the said trucks and proceeded to operate the same for the hauling of magnesite from the defendant corporation to the town of Valley in said county and state. That on or about the 18th day of July, 1917, the plaintiff demanded payment of the defendant for said trucks, and the defendant has failed and refused, [97] and still fails and refuses to pay for the same. The sale is denied by the answer, and it is further alleged that there was no contract in writing, and no part of the purchase price was paid, and no delivery of any part of the property.

Under the law of this state the sale of personal property to the value of more than fifty dollars is void unless there is some written memorandum of the sale signed by the party to be charged, or unless some part of the purchase price has been paid, or unless there has been a delivery of the property, or some part of it.

Before the plaintiff can recover in this case, therefore, he must prove two facts: He must prove that a sale was made, as alleged in his complaint, and he must prove that the property was delivered to and

accepted by the corporation. If you find from a preponderance of the testimony offered here that there was a sale, that is, that there was an agreement between the parties on the part of the vendor to sell, and on the part of the purchaser to buy, that is, if you find that their minds met, and that the consideration was agreed upon, and the property was delivered and accepted by the corporation in furtherance of that sale, your verdict will be for the plaintiff for the amount claimed. If, on the other hand, the plaintiff has failed to establish either of these facts by the preponderance of the testimony, your verdict will be for the defendant.

You must further find in this connection that the agreement to purchase was made by the corporation. That is, you must find that Cole was acting for and representing the corporation at the time these negotiations took place. If you find from the testimony that he was acting for himself and on his own account, then there can be no recovery, and your verdict will be for the defendants.

You, gentlemen of the jury, are the sole judges of the facts in this case and of the credibility of the witnesses. Before [98] reaching a verdict you will carefully consider and weigh all of the testimony. You will observe the demeanor of the witnesses upon the stand, their interest in the result of your verdict, in so far as that has been disclosed; their knowledge of the facts in relation to which they have here testified, their opportunity for hearing, seeing or knowing those facts; the probability of the truth of their testimony, and of the facts and circumstances given

in evidence or concerning the witnesses during the trial.

The negotiations have been presented here on two different basis, and you have a right to consider what transpired on both occasions in so far as the later negotiations may throw light upon the prior negotiations when the agreement is alleged to have been made.

If you find for the plaintiff, he is entitled to the full amount claimed, that is, for the sum of \$5,500, with interest at the rate of six per cent per annum from the 18th day of July last. I have computed the interest and added it to the verdict. That verdict will be signed by your foreman, if you find for the plaintiff. On the other hand, your foreman will simply sign the verdict as presented to you if you find for the defendant. Anything further?

Mr. ZENT.—Nothing for us.

The COURT.—You may now retire.

Thereafter the following proceedings were had:

On April 30, 1918, the defendant, American Mineral Production Company, served and filed its Motion for a New Trial, in words as follows, omitting the title:

“Comes now the defendant, American Mineral Production Company, and moves the Court for an order to set aside the verdict rendered by the jury in said cause and to set aside the judgment entered thereon, which verdict was rendered on [99] the 24th day of April, 1918, and judgment thereon was entered on the 25th day of April, 1918, and to grant a new trial in said cause upon the following ground:



1. Error in law occurring at the trial and excepted to by the defendant.
2. Insufficiency of the evidence to justify the verdict.
3. That the judgment is against the law.

As to the errors in law occurring at the trial to which exception was taken at the time the defendant, American Mineral Production Company, specified the particular errors which it relies upon, to wit:

(a) Error of the Court in denying the said defendant's challenge to the sufficiency of the evidence and the motion for a judgment at the close of plaintiff's case.

(b) Error of the Court in denying the defendant's challenge to the sufficiency of the evidence and a motion for judgment for the defendant, which motion was made at the close of the evidence of the entire case.

(c) Error of the Court in entering judgment in the cause.

As to the points of the insufficiency of the evidence to justify any verdict or judgment in favor of the plaintiff, the defendant specifies the particulars thereof as follows:

The defendant contends that most favorable evidence to the plaintiff is to the effect that the evidence shows that the plaintiff and C. R. Cole, who was president of the American Mineral Production Company, had some negotiations relating to the sale and purchase of the interest of the plaintiff in and to some auto trucks and his entire interest in and to a certain truck line known as the Cashmere Truck Line



and owned by C. R. Cole and the plaintiff in equal interests. That the evidence does not show that C. R. Cole was acting as an [100] officer of the American Mineral Production Company in these negotiations. That it was contemplated by C. R. Cole and the plaintiff that the negotiations when reduced to definite terms were to be set forth in written contract signed by the parties to the said negotiations. The evidence does not show that any contract in writing or otherwise was ever made between the defendant, American Mineral Production Company, and the plaintiff, nor between C. R. Cole and the plaintiff, as was contemplated by said negotiations.

This motion is based upon the pleadings and papers on file, the minutes of the Court, including not only the clerk's minutes but any notes or memorandum which may have been kept by the Judge of this court in the trial thereof, and also the reporter's transcript of his shorthand notes of said trial, and upon the exhibits introduced at the trial of said cause.

Dated at Spokane, Washington, this 30th day of April, A. D. 1918.

POST, RUSSELL, CAREY & HIGGINS,  
Attorneys for the Defendant, American Mineral  
Production Company.''

Whereupon on the 20th day of May, 1918, said motion for a new trial was taken up for hearing by consent of counsel, and the motion presented to the Court.

Whereupon, said Court made its order denying

said motion for a new trial, which order, omitting the title, is as follows:

“This cause coming on to be heard this 20th day of May, 1918, upon the motion of the above-named defendant, American Mineral Production Company, a corporation, for a new trial, plaintiff appearing by his attorney L. C. Jesseph and the defendant American Mineral Production Company appearing by its attorneys, Post, Russell & Higgins, and the Court having heard the arguments of counsel, and being fully advised in the premises. [101]

IT IS HEREBY ORDERED that said motion be and the same is hereby overruled, to which ruling the defendant American Mineral Production Company excepts and the exception is allowed.

Done this 20th day of May, 1918.

FRANK H. RUDKIN,  
Judge.”

On April 25, 1918, judgment was entered in favor of the plaintiff and against the defendant, American Mineral Production Company, which, omitting the title, is in the following language:

“This cause coming on to be heard this 23d day of April, 1918, before the Court and a jury upon the issues of law and fact raised by the pleadings and plaintiff appearing in person and by his attorneys, L. C. Jesseph and Zent & Powell, and the defendants appearing by their attorneys, Post, Russell, Carey & Higgins, and all the evidence having been adduced and the jury having received said cause and returned its verdict into court, finding for plaintiff

against the defendant, American Mineral Production Company, a corporation, in the sum of \$5,753, and the defendant C. R. Cole having heretofore been ordered dismissed from said cause upon his motion, now upon motion of plaintiff's attorneys.

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff have and recover judgment against the defendant, American Mineral Production Company, a corporation, in the sum of \$5,753, together with his costs and disbursements herein paid out and expended and that said judgment draw interest at the rate of six per cent per annum from date hereof until paid.

Done in open court this 25th day of April, 1918.

FRANK H. RUDKIN,  
Judge."

Whereupon defendant excepted to the rendering and entering of judgment in the above-entitled action, ordering and adjudging that the plaintiff herein have and recover of and from the [102] defendant, American Mineral Production Company, the sum of \$5,753, together with his costs and disbursements herein paid out and expended, with interest thereon at the rate of six per cent per annum from the date of said judgment,—which exception was allowed by the Court.

Now, in furtherance of justice and that right may be done, the defendant, American Mineral Production Company, presents this bill of exceptions in this case and prays that the same may be cited, signed



and certified by the Judge as provided by law, and filed as a bill of exceptions.

(Signed) POST, RUSSELL, CAREY &  
HIGGINS,

Attorneys for Defendant, American Mineral Production Company.

Due service of the within Bill of Exceptions by true copy thereof is hereby admitted at Spokane, Washington, this 28th day of June, 1918.

(Signed) L. C. JESSEPH,  
ZENT & POWELL,  
Attorneys for Plaintiff. [103]

---

[Title of Court and Cause.]

**Order Settling Bill of Exceptions.**

Now, on this 17th day of July 1918, the above cause coming on for hearing on the application of the defendant American Mineral Production Company, a corporation, to settle the bill of exceptions in said cause; defendant appearing by its counsel, Post, Russell, Carey & Higgins, and the plaintiff appearing by L. C. Jesseph and Zent & Powell, his attorneys, and it appearing to the Court that the defendant's proposed bill of exceptions was duly served upon the attorneys for the plaintiff, within the time provided by law, and that all amendments suggested thereto by the plaintiff have been duly allowed, and that the time for settling said bill of exceptions has not expired, and it further appearing to the Court that said bill of exceptions contains all the material facts occurring in the trial of said cause together with



exceptions thereto, and all material matters and things occurring upon said trial except exhibits 1, 2, 3, and 4, introduced in evidence, which are hereby made a part of said bill of exceptions, and the clerk is hereby ordered and instructed to attach the same thereto;

THEREFORE, upon the motion of A. E. Russell, one of the attorneys for the defendant,

IT IS HEREBY ORDERED that the said proposed bill of exceptions with the amendments allowed by this Court be and the same is hereby settled as a true bill of exceptions in said cause, and the same is hereby certified accordingly by the undersigned, Judge of this court, who presided [104] at the trial of said cause, that it conforms to the truth and that it is in proper form, and that it is a full, true and correct bill of exceptions, and the clerk of this court is hereby ordered to file the same as a record in said cause and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

Done in open court the day and year first above written.

(Signed) FRANK H. RUDKIN,  
District Judge.

[Endorsements]: Bill of Exceptions. Filed in the U. S. District Court for the Eastern District of Washington. July 17th, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [105]

[Title of Court and Cause.]

**Petition for Order Allowing Writ of Error.**

Comes now the defendant American Mineral Production Company in the above-entitled cause and feeling itself aggrieved by the rulings of the Court and the judgment entered on the 25th day of April, 1918, complains in the record and proceedings had in said cause and also of the rendition of the judgment in the above-entitled cause in said United States District Court against said defendant on the 25th day of April, 1918, that manifest error hath happened to the great damage of said defendant, American Mineral Production Company, and petitions this Court for an order allowing the said defendant to prosecute a writ of error to the Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made, and provided also that an order be made fixing the amount of the security which the defendant shall give and furnish upon said writ of error, and upon the giving of such security, all further proceedings of this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

Dated at Spokane, Washington, this 28th day of June, 1918.

(Signed) POST, RUSSELL, CAREY &  
HIGGINS,

Attorneys for Defendant, American Mineral Production Company. [106]

[Endorsements]: Petition for Order Allowing Writ of Error. Due service of the within petition by a true copy thereof is hereby admitted at Spokane, Washington, this 28th day of June, 1918. (Signed) Zent & Powell and L. C. Jesseph, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington. June 28, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [107]

---

[Title of Court and Cause.]

**Assignment of Errors.**

Comes now the defendant, the American Mineral Production Company, and files the following assignments of error, upon which it will rely upon its prosecution of the writ of error in the above-entitled cause from the judgment made by this Honorable Court upon the 25th day of April, 1918, in the above-entitled cause.

I.

That the United States District Court, in and for the Eastern District of Washington, Northern Division, erred in denying the challenge of the sufficiency of the evidence, and motion for a judgment in favor of the American Mineral Production Company made at the close of the plaintiff's case, for the following reasons:

1. That the evidence did not show any contract between the plaintiff and the defendant American Mineral Production Company.

2. That the evidence did not show any cause of



action in favor of the plaintiff and against the defendant, as alleged in the amended complaint in said cause, or at all.

3. That the contract alleged in the amended complaint and as alleged at the trial was not proven by the evidence produced at the trial.

## II.

That the Court erred in denying defendant's challenge to the sufficiency of the evidence and motion for a judgment in favor of the American Mineral Production Company at the close of all the [108] evidence in the case for the following reasons:

1. That the evidence did not show any contract between the plaintiff and the defendant American Mineral Production Company.

2. That the evidence did not show any cause of action in favor of the plaintiff and against the said defendant, as alleged in the amended complaint in said cause, or at all.

3. That the contract alleged in the amended complaint and as alleged at the trial was not proven by the evidence produced at the trial.

## III.

That the Court erred in ordering judgment to be entered in said action in favor of the plaintiff and against the defendant, American Mineral Production Company.

## IV.

That the Court erred in rendering and entering judgment in favor of the plaintiff and against the defendant, American Mineral Production Company.

WHEREFORE, the said American Mineral Pro-



duction Company, plaintiff in error, prays that the judgment of the District Court of the United States for the Eastern District of Washington, Northern Division, be reversed, and that said District Court be directed to enter judgment in said action in favor of said defendant American Mineral Production Company.

(Signed) POST, RUSSELL, CAREY &  
HIGGINS,

Attorneys for Plaintiff in Error, Defendant in the  
Lower Court, American Mineral Production  
Company.

[Endorsements]: Assignment of Errors. Due service of the within Assignment of Errors by true copy thereof is hereby admitted at Spokane, Washington, this 28th day of June, 1918. Zent & Powell, and L. C. Jesseph, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington. June 28, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [109]

---

[Title of Court and Cause.]

**Order Allowing Writ of Error.**

Upon motion of Post, Russell, Carey & Higgins, attorneys for the defendant, American Mineral Production Company, and upon filing a petition for writ of error and an assignment of errors,—

It is ORDERED that a writ of error be, and hereby is allowed, to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the

judgment heretofore entered herein, and that the amount of the bond on said writ of error be and hereby is fixed at the sum of seven thousand five hundred dollars (\$7,500), which said bond may be executed by said defendant as principal, its attorneys herein, and by such surety or sureties as shall be approved by this Court, and which shall operate as a supersedeas bond, and a stay of execution is hereby granted, pending the determination of such writ of error.

Done in open court this 28th day of June, 1918.

(Signed) FRANK H. RUDKIN,  
District Judge.

[Endorsements]: Order Allowing Writ of Error. Service of the within Order by a true copy thereof is hereby admitted at Spokane, Washington, this 28th day of June, 1918. (Signed) L. C. Jesseph and Zent & Powell, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, June 28, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [110]

---

[Title of Court and Cause.]

### **Order Allowing Bond.**

The defendant, American Mineral Production Company, having this day filed a petition for a writ of error from the rulings, decisions and judgment made and entered in said action to the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit, together with assignment of errors,

within due time, and also praying that an order be made fixing the amount of security which it should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings in this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the Ninth Circuit, and said petition having been this day duly allowed;

Now, therefore, it is ORDERED that upon the said defendant American Mineral Production Company filing with the clerk of this court a good and sufficient bond in the sum of seven thousand five hundred dollars (\$7,500) to the effect that if the said American Mineral Production Company, plaintiff in error, shall prosecute said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the said obligations to be void, else to remain in full force and virtue, the said bond to be approved by the Court; that all further proceedings in this court be and they are hereby suspended and stayed until the determination of said writ of error by the said United States Circuit [111] Court of Appeals.

Dated this 28th day of June, 1918.

(Signed) FRANK H. RUDKIN,  
District Judge.

[Endorsements]: Order Allowing Bond. Due service of the within Order by a true copy thereof is hereby admitted at Spokane, Washington, this 28th day of June, 1918. (Signed) Zent & Powell, and L. C. Jesseph, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of



Washington. June 28, 1918. W. H. Hare, Clerk.  
By S. M. Russell, Deputy. [112]

---

[Title of Court and Cause.]

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, American Mineral Production Company, as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto F. M. Helsley in the full and just sum of seven thousand five hundred dollars (\$7,500), to be paid to the said F. M. Helsley, for which payment well and truly to be made, we bind ourselves, and our and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 28th day of June, 1918.

WHEREAS, lately at the April Term, A. D. 1918, the District Court of the United States for the Eastern District of Washington, Northern Division, in a suit pending in said court between F. M. Helsley, plaintiff, and C. R. Cole and American Mineral Production Company, defendants, a final judgment was rendered against the said defendant American Mineral Production Company and in favor of the said plaintiff, and the said defendant American Mineral Production Company having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said F. M. Helsley is about to be issued, citing and admonishing him to be and appear at the United



States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, thirty days from and after the filing of said citation; [113]

Now, the condition of the above obligation is such, that if the said American Mineral Production Company shall prosecute its writ of error to effect and shall answer all damages and costs that may be awarded against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) AMERICAN MINERAL PRODUCTION COMPANY.

By POST, RUSSELL, CAREY & HIGGINS,

Its Attorneys.

UNITED STATES FIDELITY AND GUARANTY COMPANY.

Its Attorney-in-Fact.

[Corporate Seal] By M. B. CONNELLY,

The foregoing bond is approved as to form, amount and sufficiency of surety this 28th day of June, 1918.

(Signed) FRANK H. RUDKIN,

Judge of the United States District Court for the Eastern District of Washington, Northern Division.

[Endorsements]: Bond on Writ of Error. Due service of the within bond by a true copy thereof is hereby admitted at Spokane, Washington, this 28th day of June, 1918. (Signed) Zent & Powell and L. C. Jesseph, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of

Washington. June 28, 1918. W. H. Hare, Clerk.  
By S. M. Russell, Deputy. [114]

---

[Title of Court and Cause.]

**Writ of Error.**

United States of America,—ss.

The President of the United States of America to  
the Honorable, the Judge of the District Court  
of the United States for the Eastern District  
of Washington, Northern Division, GREET-  
ING:

Because in the record and proceedings, as also in  
the rendition of the judgment of a plea, which is in  
the said District Court before you at the April, 1918,  
Term, thereof, between F. M. Helsley, as plaintiff,  
and American Mineral Production Company, de-  
fendant, a manifest error hath happened to the great  
damage of the said American Mineral Production  
Company, plaintiff in error, as by its complaint ap-  
pears;

We being willing, that error, if any hath been,  
should be duly corrected and full and speedy justice  
done to the parties aforesaid in this behalf, do com-  
mand you, if judgment be therein given, that then  
under your seal, distinctly and openly, you send the  
record and proceedings aforesaid and all things con-  
cerning the same, to the United States Circuit Court  
of Appeals for the Ninth Circuit, together with this  
writ, so that you have the same at the City of San  
Francisco, in the State of California, on the 28th

day of July, next, in the said Circuit Court of Appeals, to be then and there held, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, which [115] according to the laws of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 28th day of June, 1918, of the Independence of the United States the one hundred forty-second year.

[Seal] (Signed) W. H. HARE,  
Clerk of the District Court of the Eastern District  
of Washington, Northern Division.

Allowed by:

(Signed) FRANK H. RUDKIN,  
District Judge.

[Endorsements]: Writ of Error. Service of the within Writ of Error and receipt of copy thereof is hereby admitted this 28th day of June, 1918. (Signed) L. C. Jesseph and Zent & Powell, Attorneys for the Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington. June 28, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [116]



[Title of Court and Cause.]

**Citation on Writ of Error.**

The President of the United States to F. M. Helsley and to L. C. Jesseph and Zent & Powell, His Attorneys, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Eastern District of Washington, Northern Division, wherein F. M. Helsley is plaintiff, and you are defendant in error and American Mineral Production Company is plaintiff in error, to show cause why, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 28th day of June, 1918, and the Independence of the United States the one hundred forty-second year.

(Signed) FRANK H. RUDKIN,  
United States District Judge for the Eastern District of Washington, Northern Division.

[Seal] Attest: (Signed) W. H. HARE,  
Clerk. [117]

[Endorsements]: Citation on Writ of Error. Due service of the within Citation by true copy thereof is



hereby admitted at Spokane, Washington, this 28th day of June, 1918. (Signed) L. C. Jesseph and Zent & Powell, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington. June 28, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [118]

---

[Title of Court and Cause.]

**Stipulation as to Transcript of Record.**

IT IS HEREBY STIPULATED between the plaintiff, by his attorneys, and the defendant, American Mineral Production Company, by its attorneys, that the transcript of the record on the writ of error in the above-entitled cause shall be made up of the following papers:

Amended complaint.

Answer to amended complaint.

Reply.

Verdict.

Plaintiff's motion for new trial.

Order denying motion for new trial.

Stipulation extending time for filing proposed bill of exceptions.

Judgment.

Bill of exceptions.

Petition for writ of error.

Assignment of errors.

Bond on writ of error.

Order allowing bond.

Order allowing writ of error.

Stipulations as to making up record.

Writ of error.

Praecipe.

Citation on writ of error. [119]

Order extending time.

Dated this 16th day of July, 1918.

(Signed) POST, RUSSELL, CAREY &  
HIGGINS,

Attorneys for Defendant and Plaintiff in Error.

L. C. JESSEPH,  
ZENT & POWELL,

Attorneys for Plaintiff and Defendant in Error.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washington. July 16, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [120]

---

[Title of Court and Cause.]

**Stipulation as to Printing Transcript of Record.**

IT IS HEREBY STIPULATED by plaintiff in error by its attorneys, and by defendant in error, by his attorneys, that in printing the record in the above-entitled action, the clerk shall cause the following to be printed for the consideration of the Court on Appeal:

Amended complaint.

Answer to amended complaint.

Reply.

Verdict.

Plaintiff's motion for new trial.

Order denying motion for new trial.

Judgment.

Stipulation extending time for filing proposed bill of exceptions.

Bill of exceptions.

Petition for writ of error.

Assignment of errors.

Bond on writ of error.

Order allowing bond.

Order allowing writ of error.

Stipulations as to making up record.

Writ of error.

Praecipe.

Citation on writ of error. [121]

Order extending time.

IT IS FURTHER STIPULATED that in printing the said record, there may be omitted therefrom the title of the court and cause on all papers, excepting the first page, and that in lieu of said court and cause there be inserted in the place and stead thereof, the following words, "Title of Court and Cause."

Dated this 16th day of July, 1918.

(Signed) POST, RUSSELL, CAREY &  
HIGGINS,

Attorneys for Defendant and Plaintiff in Error.

L. C. JESSEPH,  
ZENT & POWELL,

Attorneys for Plaintiff and Defendant in Error.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washington. July 16, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [122]

[Title of Court and Cause.]

**Order Extending Time to August 15, 1918, to File  
Transcript.**

United States of America,—ss.

This matter coming on to be heard on application of American Mineral Production Company, a corporation, the appellant, for an order extending the time for appearance in the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, to the 15th day of August, 1918, and it appearing to the Court that the attorneys for the appellee have consented to said extension,—

IT IS ORDERED that the time for filing the transcript or for the appearance by either appellee or the appellant, or either of them, in the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, is continued until the 15th day of August, 1918, to the same extent and effect as though the citation issued herein had cited and admonished said appearance for the said 15th day of August, 1918.

Done in open court this 18th day of July, 1918.

(Signed) FRANK H. RUDKIN,  
United States District Judge.

[Endorsements]: Order. Filed in the U. S. District Court for the Eastern District of Washington. July 18, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [123]



[Title of Court and Cause.]

**Praeceptum for Transcript of Record.**

To the Clerk of the Above-entitled Court:

You will please prepare transcript of record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the writ of error heretofore perfected and allowed to said court, which record shall be transmitted in printed form to the Clerk of the Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following files, proceedings and papers on file:

Amended complaint.

Answer to amended complaint.

Reply.

Verdict.

Plaintiff's motion for new trial.

Order denying motion for new trial.

Judgment.

Stipulation extending time for filing proposed bill of exceptions.

Bill of exceptions.

Petition for writ of error.

Assignment of errors.

Bond on writ of error.

Order allowing bond.

Writ of error. [124]

Order allowing writ of error.

Citation on writ of error.

Stipulations as to making up record.

Praecipe.

Order extending time.

(Signed) POST, RUSSELL, CAREY &  
HIGGINS,

Attorneys for Plaintiff in Error.

[Endorsements]: Praecipe. Filed in the U. S. District Court for the Eastern District of Washington. June 28, 1918. W. H. Hare, Clerk. By S. M. Russell, Deputy. [125]

---

[Title of Court and Cause.]

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

United States of America,  
Eastern District of Washington,—ss.

I, W. H. Hare, Clerk of the District Court of the United States in and for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages constitute and are a full, true, correct and complete copy of so much of the record, pleadings, orders and other proceedings had in said action, as the same remain of record and on file in the office of the clerk of the said District Court, as called for by the defendant and plaintiff in error in its praecipe; and that the same constitute the record on writ of error from the judgment of the District Court of the United States in and for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California, which writ of error was lodged and filed

in my office on June 28th, 1918.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause, together with original stipulation as to printing record, and original exhibits 1, 2, 3 and 4.

I further certify that the fees of the clerk of this court for preparing and certifying to the foregoing typewritten record amount to the sum of fifty-two dollars and ten cents (\$52.10), and that the same has been paid in full by Post, Russell, [126] Carey & Higgins, attorneys for the defendant and plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Spokane, in the said District, this 19th day of July, 1918.

[Seal]

W. H. HARE,  
Clerk. [127]

---

[Endorsed]: No. 3184. United States Circuit Court of Appeals for the Ninth Circuit. American Mineral Production Company, a Corporation, Plaintiff in Error, vs. F. M. Helsley, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Filed July 23, 1918.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

